TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~230~~ 38.

THE FIRST NATIONAL BANK OF ABERDEEN, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF CHEHALIS AND J. M. CARTER, AS TREASURER AND EX OFFICIO COLLECTOR OF TAXES OF SAID COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED AUGUST 21, 1893.

(15,381.)

and his successful contestant is concerned, than could be accomplished by taking his appeal within the forty days set by the Court of Appeals. Furthermore, if at the end of the four years supposed above, the Court should award him a patent, the effect would be virtually to extend the monopoly of the invention to a period of twenty-one years instead of seventeen, as contemplated and provided by the statutes.

In no case can it be perceived that the defeated contesting party is prejudiced or injured in his rights as an applicant by requiring him to appeal within forty days.

While counsel for the petitioner has argued that the Commissioner of Patents has no authority to withhold a patent, it is not agreed to in cases where an appeal is contemplated, because the mere fact of providing for an appeal indicates that the Commissioner shall take no further action until the appeal has been decided by the Appellate Court. Were this not so, one of the very purposes for which an appeal is taken by a defeated party would be undone by reason of the issue of the patent to his successful contestant. He appeals not only to obtain a patent, but to prevent his successful opponent in the Patent Office from obtaining it.

As to the petitioner's argument against respondent's appeal to the equity of the rules of the Court limiting the time of appeal, this is thought to be sufficiently answered under the fifth point and in the brief against the petition.

Respectfully submitted.

W. A. MEGRATH,
Special Counsel.

March 24, 1897.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~236~~ 38.

THE FIRST NATIONAL BANK OF ABERDEEN,
PLAINTIFF IN ERROR,

vs.

THE COUNTY OF CHEHALIS AND J. M. CARTER, AS TREASURER AND EX OFFICIO COLLECTOR OF TAXES OF SAID COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED AUGUST 21, 1893.

(15,381.)

(15,381.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 266

THE FIRST NATIONAL BANK OF ABERDEEN, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF CHEHALIS AND J. M. CARTER, AS TREASURER AND EX OFFICIO COLLECTOR OF TAXES OF SAID COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

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1 In the Superior Court of the State of Washington, Sitting within and for the County of Chehalis.

FIRST NATIONAL BANK OF ABERDEEN, WASHINGTON, Plaintiff, *v.* THE COUNTY OF CHEHALIS, IN THE STATE OF Washington, and J. M. Carter, as Treasurer and *ex Officio* Collector of Taxes for said County, Defendants.	No. 662.	Complaint.

To the Honorable Mason Irwin, judge of the above-entitled court:

The First National Bank of the City of Aberdeen, Washington, a banking corporation created and doing business in the city of Aberdeen, in the county of Chehalis, State of Washington, under and by virtue of the national banking acts of the United States of America, brings this its complaint against The County of Chehalis, in the State of Washington, and against J. M. Carter, as treasurer and *ex officio* tax-collector of the county of Chehalis aforesaid, and complains and alleges as follows:

I.

That at all of the times hereinafter referred to complainant was a corporation created and doing a banking business as a national bank under the national banking laws of the United States
2 of America and located at the city of Aberdeen, in the county of Chehalis, State of Washington.

II.

That at all times hereinafter mentioned and prior thereto the defendant J. M. Carter was and he now is the duly elected and qualified treasurer of the county of Chehalis aforesaid and as such *ex officio* collector of delinquent taxes in and for said county.

III.

That the capital stock of complainant consists of five hundred (500) shares of one hundred ($100.00) dollars each; that all of the same is fully subscribed and paid up and is owned in part by citizens of the State of Washington resident in the State of Washington and in part by citizens of the United States residing outside of the State of Washington.

IV.

That on and prior to the first day of April, 1891, one J. W. Bunn was the duly elected and qualified assessor of the county of Chehalis aforesaid, and by virtue of his office was charged with and by the provisions of the act of the legislature of the State of Washington approved March 9, 1891, and entitled "An act to provide for the assessment and collection of taxes in the State of Washington and

declaring an emergency," which said act went into effect on the day of its approval, with the duty of preparing an assessment-
3 roll of all the property subject to taxation in the said county of Chehalis as owned and there subject to taxation on the said first day of April, 1891.

V.

That the said assessor thereupon proceeded to make out an assessment-roll for said county, wherein, *inter alia*, he did list to complainant, as owner thereof, five hundred (500) shares of complainant's capital stock, valuing the same, for the purposes of assessment and taxation thereunder, at the rate of one hundred ($100.00) dollars per share, and did list the same *in solido* to complainant, as owner thereof, at a total valuation of fifty thousand ($50,000.00) dollars.

VI.

That prior to the making of the said assessment-roll as alleged in the foregoing paragraph of this complaint the said assessor never required of this complainant any list of its property, but complainant alleges that prior to the making of the said assessment-roll this complainant, through its cashier, delivered to the assessor aforesaid a list of its stockholders, together with a statement of the amount of the capital stock of complainant company held by each of them on the said first day of April, 1891, and that the said assessor, well knowing the owners of the said stock and the residence of each of them, assessed the capital stock of the said corporation *in*
4 *solido* as aforesaid to the said complainant; and complainant further alleges that the list of the owners of the capital stock of the said corporation, so returned by complainant, was returned by it as the agent of the stockholders of the said company, and that the said assessor, well knowing that said list was so furnished, wrongfully and fraudulently listed and assessed the said stock to the said complain-t.

VII.

That thereafter, in the month of November, 1891, the State board of equalization having previously acted in the matter of equalization of taxes throughout the State and having previously declared the rate of levy throughout the State for taxation and State purposes, the board of county commissioners of said Chehalis county, being charged with the duty so to do, by virtue of their office as such commissioners and by statute in such case made and provided, did, by resolution, levy a tax upon the several properties listed in said assessment-roll to the respective owners thereof as so listed, including complainant, at the rate of $11\frac{23}{40}$ mills on each dollar of valuation as fixed in said roll as equalized, said levy being for State, county, school, and road purposes.

VIII.

That thereafter, in the month of November, 1891, the auditor of said Chehalis county, having extended said levy upon said
5 assessment-roll, did deliver the said assessment-roll to the defendant J. M. Carter, as treasurer of said Chehalis county, together with his, said auditor's, warrant, commanding the said treasurer to collect from the persons, firms, corporations therein assessed, including complainant, the tax therein respectively assessed to such person, firm, or corporation, thereby including in said command the tax so as aforesaid assessed to complainant upon the said five hundred (500) shares of its capital stock, which said tax then amounted to the sum of $686.25 principal.

IX.

That thereafter, the said tax so as aforesaid assessed to complainant not having been paid in whole or in part, the defendant, the said county treasurer, did, on the first day of March, 1892, declare the same delinquent, and did thereupon add thereto a penalty of ten per cent. upon the amount thereof, to wit, the sum of $62.68 and the sum of $32.35 interest, and is now most wrongfully proceeding to collect the said tax of and from the complainant in the total sum of $787.22, exclusive of interest and costs, and threatens to collect the same and the whole thereof of and from complainant by distraining sufficient property, goods, and chattels of the complainant wherewith to make the same, and unless restrained by order of this court will most wrongfully and unlawfully, by force of his official power, collect the said tax and the whole thereof from the
6 complainant by levying upon its goods and chattels and thereby seriously injuring complainant's business and interfering with the banking business of complainant, to the great detriment of complainant, its stockholders and depositors, and thereby violating and setting at naught the provisions of the Revised Statutes of the United States under which complainant was created and has its corporate existence and from which it derives its power to conduct its business as a national bank.

X.

That heretofore the said J. M. Carter, treasurer and *ex officio* tax-collector, has threatened to distrain the goods and chattels of the complainant for the tax aforesaid, and for that purpose has threatened to take from the possession of the said complainant the safes, time-locks, and other property in the complainant's banking-house and used in the operations and business of the said banking corporation; that the said safes, time-locks, and other property are used in the keeping of the deposits of the depositors and patrons of complainant, and that if the same are taken and the banking business of this complainant are interfered with, as it would be were the same permitted to be taken, that great, lasting, and irreparable injury would result to the complainant; that the property so threat-

ened to be taken in and by the distrainer so threatened as
7 aforesaid is of special and peculiar value to complainant.

XI.

That said assessment is an assessment *in solido* directly to the complainant, and said tax is levied upon and directly against the complainant, and because so assessed and levied is in direct contravention and violation of and forbidden by the provisions of sections 5214 and 5219 of the Revised Statutes of the United States and generally of the banking acts and laws of the United States.

XII.

That by the provisions of the act of the legislature of the State of Washington hereinbefore by its title referred to the shares of the stock held by the shareholders of the complainant are not taxable, but are exempted from taxation.

XIII.

That on the first day of April, 1891, there existed in the county of Chehalis, State of Washington, taxable moneyed capital (other than and beyond that invested in shares of stock of national banks and banking business), owned by citizens of said State resident in said county and there invested in loans and securities to them payable and owing by other citizens of said State residing in said county, of vast amount, to wit, exceeding the sum of two hundred and thirty-seven thousand four hundred dollars.

8 XIV.

That on said first day of April, 1891, there existed in the State of Washington, in counties other than the county of Chehalis aforesaid, other taxable capital in money and moneyed capital (aside from the moneyed capital referred to in the paragraph immediately preceding and aside from the capital invested in banks and banking business), owned by citizens of the State of Washington resident in said State (in counties other than the county of Chehalis) and there invested in loans and securities to them payable and owing by other resident citizens of said State, in counties other than the county of Chehalis, of vast amount, to wit, exceeding the sum, as complainant is informed and believes, of fourteen million dollars.

XV.

That on the said first day of April, 1891, the total capitalization of national banks located in the State of Washington was the sum of seven million dollars; that the total capitalization of banks there located, but incorporated under the laws of the State of Washington, was the sum of four million dollars, and that at the same time large amounts of moneyed capital were invested in the State of Washington by residents of said State in the stocks and

bonds of insurance, wharf, and gas companies, and in addition to the foregoing there then existed in said State other moneyed capital amounting to at least twenty-six million dollars, being the other moneyed capital hereinbefore referred to; that in no case, as complainant is informed and believes and so charges the fact to be, is the stock of any national bank or the shares of the stock of any national bank located in the State of Washington valued for assessment for taxation in said State at a less sum or assessed upon a valuation of less than eighty-five per cent. of the par value thereof; and, further, that the total assessment and total valuation in the assessment for taxation throughout the State of Washington for the year 1891 of and upon the bonds and shares of banks, banking corporations, insurance, gas, wharf, and other corporations was the sum of eight million two hundred and five thousand five hundred and three dollars.

XVI.

That the facts alleged in the preceding paragraphs hereof numbered XIII, XIV, and XV were then and during all of the times intervening between the first day of April, 1891, and the time of the return of the several assessment-rolls throughout the State of Washington by the county assessors to the county auditors well known to the assessor of the county of Chehalis and all other county assessors throughout the State of Washington, and during all of said times and until the first day of March, 1892, were well known to the several county and State officers hereinbefore referred to, and also to the boards of equalization and boards of county commissioners and the auditor of each of the counties in said State, and since the first day of March, 1892, have been and now are well known to the defendant the treasurer of Chehalis county.

XVII.

That on said first day of April, 1891, the entire capital, surplus, and undivided profits of complainant were invested as follows, to wit: $12,500.00 in bonds of the United States and the remainder in loans to residents of the State of Washington, furniture, and fixtures.

XVIII.

That all of said other moneyed capital referred to in the foregoing paragraphs hereof numbered XIII and XIV was purposely omitted from the assessment and from taxation whatsoever by each and every of the county assessors and other taxing officers throughout the State of Washington, and the same and the whole thereof has escaped taxation throughout the State of Washington.

XIX.

That the omission by the several county assessors and taxing officers of the several counties in said State to either assess or tax

other moneyed property or capital last aforesaid was made through, under, and by reason and in pursuance of an agreement entered into prior to the first day of April, 1891, between the several county assessors of the several counties in said State, whereby it was
11 agreed upon between them that such omission should be made by them and all of them, and said omission and agreement to omit was in pursuance of an opinion rendered by the attorney general of the State of Washington to the said several county assessors at their request advising such omission, the said attorney general being by virtue of his office required by the laws of the State of Washington to render such opinion upon the request of said assessors.

XX.

That such omission necessarily operated as a discrimination in favor of other moneyed capital in the hands of individual citizens of said State and against shares of stock of national banking corporations located within this State, including complainant, and necessarily resulted in the taxation of the shares of such national banks, including complainant, at a greater rate than other moneyed capital in the hands of the individual citizens of said State, all of which was well known to and most wrongfully intended by said several county assessors and taxing officers, and all of which is in direct violation of and forbidden by the provisions of the Revised Statutes hereinabove specifically referred to.

XXI.

That for the several reasons aforesaid the said tax assessed
12 to complainant is inequitable, illegal, and void, whether the same be an assessment *in solido* to complainant or an assessment upon its shares of stock to the individual owners thereof, and the aforesaid attempted threatened proceeding to collect the same from complainant on the part of the defendant, the said county treasurer, is unjust and oppressive and should be restrained, and that if plaintiff is required to give notice of an application for an injunction the injury threatened will have been committed before said notice can be given.

Wherefore complainant prays that upon the hearing and determination of the matters herein involved it may be decreed by this court that said assessment to complainant is illegal and said tax against complainant particularly described and referred to in the foregoing bill of complaint is void; and, further, that by order of this court a permanent injunction may issue restraining and enjoining the defendants and each of them from further in any way proceeding in the collection of said tax. Complainant further prays that pending the final hearing of this cause upon its merits a temporary restraining order be issued by the court restraining the collection of the tax so assessed to complainant as is herein described from complainant or any part of the same during the time which shall intervene between the filing of this bill of complaint and the

final decree of this action; and complainant prays for such
13–22 other and further relief as in equity it is entitled or the necessities of this case may require.

M. J. COCHRAN AND
PRESTON, CARR & PRESTON,
Attorneys for Plaintiff.

STATE OF WASHINGTON, } ss:
County of Chehalis, }

H. A. Hayes, being duly sworn, upon his oath deposes and says that he is the cashier of The First National Bank, the plaintiff herein; that he has heard read the foregoing complaint and knows the contents thereof; that the matters therein alleged are true.

H. A. HAYES.

Subscribed and sworn to before me this 16th day of May, 1892.

M. J. COCHRAN, [NOTARY SEAL.]
Notary Public in and for the State of Washington,
Residing at Aberdeen, Washington.

Filed May 16th, 1892.

H. M. SUTTON, *Clerk,*
By M. P. TRASK, *Deputy.*

* * * * * * *

23 & 24 In the Superior Court of the State of Washington, Sitting within and for the County of Chehalis.

FIRST NATIONAL BANK OF ABERDEEN, Washington (a Corporation), Plaintiff, *vs.* THE COUNTY OF CHEHALIS, in the State of Washington, and J. M. Carter, Treasurer and *ex Officio* Tax-collector of said County, Defendants.	No. 662. Demurrer.

Come now the defendants and demur to the complaint filed herein and for ground of demurrer say:

I.

That the said complaint does not state facts sufficient to constitute a cause of action.

J. C. PEARSON,
County Att'y.
JAMES. A. HAIGHT,
Of Counsel.

Service of copy waived this 2nd day of June, 1892.

M. J. COCHRAN,
Of Counsel for Plaintiff.

Filed Jun- 3, 1892.
H. M. SUTTON, *Clerk.*

* * * * * * *

25-32 In the Superior Court of Chehalis County, Washington.

THE FIRST NATIONAL BANK OF ABERDEEN, Pl'tff,
vs.
J. M. CARTER, Treasurer and *ex Officio* Tax-collector of Chehalis County, and The County of Chehalis, Washington, Defendant-.

Now, on this day, this cause coming on to be heard further upon the demurrer and application for injunction made and presented herein, and the court heretofore having sustained the demurrer herein and denied said application for injunction, to which ruling and order the plaintiff having duly excepted and the exception duly entered and allowed, and the plaintiff having elected to stand by its complaint herein, it is now considered, ordered, and adjudged that the said complaint be dismissed, and that the defendants do have and recover of plaintiff all their costs in this behalf expended; to which judgment plaintiff duly excepts, and *their* exception is allowed; and it is further ordered that this judgment and order enter *nunc pro tunc* as of the 3rd day of September, 1892.

MASON IRWIN, *Judge.*

Dated Sept. 13th, 1892.

Filed 13th day of Sept., 1892, and entered on page- 71, 72 of Journal No. 5.

H. M. SUTTON, *Clerk,*
By M. P. TRASK,
Deputy Clerk.

* * * * * * *

33 FIRST NATIONAL BANK OF ABERDEEN, Appellant,
v.
THE COUNTY OF CHEHALIS *et al.*, Respondents. } = 760. Filed Mar. 8, 1893.

The appellant bank complains that the county treasurer of Chehalis county is about to levy upon the property of the bank for taxes for the year 1891 which were assessed to the bank upon its capital stock in the sum of $50,000. The complaint shows that, although its cashier delivered to the county assessor a list of its stockholders, giving their residence, together with a statement of the amount of the capital stock of the bank held by each of its stockholders on the 1st day of April, 1891, the assessor refused to assess the stock to the holders thereof, and assessed the whole of it to the corporation *in solido.* The tax was levied under the revenue act of 1891, and the first point made by appellant is that an assessment of the capital stock of a national bank, made to the bank *in solido*, is forbidden by the provisions of Rev. St. U. S. § 5219. It seems to us, however, that this contention must be resolved against the appellant upon the authority of National Bank *v.* Com., 9 Wall. 353. Section 5219, Rev. St. U. S., is as follows: "Nothing herein shall prevent all the shares in any association

from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes to the same extent, according to its value, as other real property is taxed." This section, so far as the point in issue goes, is in substance the same as the forty-first section of the act of Congress establishing national banks, (15 Stats. 111.) In the case cited, the State of Kentucky, many years before national banks were thought of, had the following provisions among its laws: First. That on bank stock or stock in any moneyed corporation of loan or discount there should be paid an annual tax of 50 cents on each share thereof equal to $100, or on each $100 of stock therein owned by individuals, corporations, or societies. Second. The cashier of a bank and the treasurer of any other institution whose stock is taxed should, on the 1st day of July in each year, pay into the treasury the amount of tax due. If such tax were not paid, the cashier and his
34 sureties should be liable for the same and 20 per cent. upon the amount, and the said bank or corporation should thereby forfeit the privileges of its charter. Rev. St. Ky. 1860, pp. 239, 266. Under these provisions it was held, in the case above cited, that the bank was subject to an action for the amount of the tax assessed upon the stock; the theory being that the State had the right to resort to the bank as a garnishee for the collection of its claims against the stockholders for taxes which it might otherwise be unable to collect by any means within its power. That case is unreversed, and must be taken to be conclusive authority upon the argument of the question before us. The First National Bank of Leoti *v.* Fisher (Kan.) 26 Pac. Rep. 482, and Miller *v.* First National Bank, (Ohio,) 21 N. E. Rep. 860, are late cases, where, from a superficial reading of the opinions, it might be gathered that a different holding had been adopted in the supreme courts of Kansas and Ohio, but a closer reading shows that in both of those States the statute expressly provides for the assessment of the shares of stock to the owner, and contains no provision regarding payment of the tax by the bank itself. Sections 21 and 23 of our revenue law of 1891 contain substantially the same provisions as the Kentucky statute above quoted, in so far as the assessment and collection are concerned, (Paul *v.* McGraw, 3 Wash. 296;) and upon the first point, therefore, the decision must be against the appellant.

The further, and perhaps the principal, ground of appellant's action is found in the following paragraphs of its complaint: "(13) That on the 1st day of April, 1891, there existed in the county of

Chehalis, State of Washington, taxable moneyed capital (other than and beyond that invested in shares of stock of national banks and banking business) owned by citizens of said State, resident in said county, and there invested in loans and securities, to them payable and owing by other citizens of said State residing in said county, of vast amount, to wit, exceeding the sum of two hundred and thirty-seven thousand four hundred dollars. (14) That on said 1st day of April, 1891, there existed in the State of Washington, in counties other than the county of Chehalis, aforesaid, other taxable capital in money and moneyed capital, (aside from the moneyed capital referred to in the paragraph immediately preceding, and aside from the capital invested in banks and banking business,) owned by citizens of the State of Washington, resident in said State, (in counties other than the county of Chehalis,) and there invested in loans and securities to them payable, and owing by other resident citizens of said State, in counties other than the counties of Chehalis, of vast amount, to wit, exceeding the sum, as complainant is informed and believes, of fourteen million dollars. (15) That on the said 1st day of April, 1891, the total capitalization of national banks located in the State of Washington was the sum of seven million dollars; that the total capitalization of banks there located, but incorporated under the laws of the State of Washington, was the sum of four million dollars; and that at the same time large amounts of moneyed capital were invested in the State of Washington by residents of said State, in the stocks and bonds of insurance, wharf, and gas companies; and, in addition to the foregoing, there then existed in said State other moneyed capital amounting to at least twenty-six million dollars, being the other moneyed capital hereinbefore referred to; that in no case, as complainant is informed and believes, and so charges the fact to be, is the stock of any national bank, or the shares of the stock of any national bank located in the State of Washington, valued for assessment for taxation in said State at a less sum or assessed upon a valuation of less than eighty-five per cent. of the par value thereof; and, further, that the total assessment and total valuation in the assessment for taxation throughout the State of Washington for the year 1891 of and upon the bonds and shares of banks, banking corporations, insurance, gas, wharf, and other corporations, was the sum of eight million two hundred and five thousand five hundred and three dollars. (16) That the facts alleged in the preceding paragraphs hereof numbered 13, 14, and 15 were then, and during all of the times intervening between the 1st day of April, 1891, and the time of the return of the several assessment-rolls throughout the State of Washington by the county assessors to the county auditors, well known to the assessor of the county of Chehalis, and all other county assessors throughout the State of Washington, and during all of said times, and until the 1st day of March, 1892, were well known to the several county and State officers hereinbefore referred to, and also to the boards of equalization and boards of county commissioners and the auditor of each of the counties in said State, and since the 1st day of March, 1892, have been and now are well known to the

defendant the treasurer of Chehalis county. (17) That on said 1st day of April, 1891, the entire capital, surplus, and undivided profits of complainant were invested as follows, to wit, $12,500 in bonds of the United States, and the remainder in loans to residents of the State of Washington, furniture and fixtures. (18) That all of said other moneyed capital referred to in the foregoing paragraphs hereof, numbered 13 and 14, was purposely omitted from the assessment and from taxation whatsoever by each and every of the county assessors and other taxing officers throughout the State of Washington, and the same and the whole thereof has escaped taxation throughout the State of Washington. (19) That the omission by the several county assessors and taxing officers of the several counties in said State to either assess or tax other moneyed property or capital last aforesaid was made through, under, and by reason and in pursuance of an agreement entered into prior to the 1st day of April, 1891, between the several county assessors of the several counties in said State, whereby it was agreed upon between them that such omission should be made by them and all of them; and said omission
36 and agreement to omit was in pursuance of an opinion rendered by the attorney general of the State of Washington to the said several county assessors at their request, advising such omission; the said attorney general being, by virtue of his office, required by the laws of the State of Washington to render such opinion upon the request of said assessors. (20) That such omission necessarily operated as a discrimination in favor of othey moneyed capital in the hands of individual citizens of said State, and against shares of stock of national banking corporations located within this State, including complainant, and necessarily resulting in the taxation of the shares of such national banks, including complainant, at a greater rate than other moneyed capital in the hands of the individual citizens of said State, all of which was well known to and most wrongfully intended by said several county assessors and taxing officers, and all of which is in direct violation of and forbidden by the provisions of the Revised Statutes hereinabove specifically referred to." The substance of these allegations is: First, that there was taxable moneyed capital in Chehalis county, which escaped the assessment, amounting to $237,400; second, that there was like unassessed moneyed capital in other portions of the State exceeding $14,000,000; third, that the moneyed capital invested in banks, national and State, was $11,000,000; fourth, that there was invested in the stocks and bonds of insurance, wharf, and gas companies, and other moneyed institutions, moneyed capital amounting to at least $26,000,000.

Standing by themselves, the allegations of paragraphs 13, 14, and 15 are not sufficiently definite to enable us to ascertain therefrom the character of the institutions in which the moneyed capital which is said to be unassessed, so that we might say from a reading of the allegations there contained that this, that, or the other moneyed capital therein described was or was not assessable, or, if not assessed, that the failure to assess was a discrimination against the national banks; but it is said in the following sections that the

facts stated were well known to the county assessors of the several counties in the State, and that their failure to either assess or tax the omitted moneyed property or capital was the purposed action of the assessors, brought about by an agreement made between the several county assessors in the State, whereby it was agreed between them that such omission should be made by them, and all of them, and that their agreement was caused by an opinion rendered by the attorney general of the State, advising such omission. It might be expected, therefore, that a reference to the published opinions of the attorney general would afford some description of the property by him advised to be omitted from the assessment-rolls. While it is outside of the record in this case, it is altogether probable that the opinion of the attorney general of February 5, 1891, addressed to Hon. T. M. Reed, State auditor, (Op. Att'ys Gen. 1891, p. 59,) contains
37 the advice referred to. The question answered by the attorney general was, "Are credits or mortgages taxable under the law of March 9, 1891?" and the answer is in the negative. Mortgages are easily enough understood, but when the term "credits" is used a much larger class of property is meant. In this opinion, however, the writer evidently refers to mere debts due from one person to another, and the example which he gives and refers to most frequently is a promissory note secured by a real or chattel mortgage, or solvent signers, and there was no reference to the credits of banks, bankers, brokers, or stock jobbers, or bonds or stock other than bank stock, or shares of bank stock, or shares of banking, wharfage, gas, water, or insurance companies. Accounts, promissory notes, and mortgages constitute the subject-matter of the opinion. If, therefore, the action of the assessors was based upon this decision of the law officer of the State, and went no further, the allegations of the complaint would certainly turn out to be unsupported. The requirement of the Federal statute that the taxation of national banks was not to be at a greater rate than is assessed to other moneyed capital in the hands of individual citizens of such State, has received frequent attention of the Supreme Court of the United States, and its construction seems to be at last reasonably settled. The paramount question has been, What is moneyed capital, within the meaning of the statute? Every person who uses money in the prosecution of any business must necessarily be said to have a moneyed capital. But it is not every such capital that is within the terms of this statute. The purpose of Congress in making the provision referred to, as defined by the Supreme Court of the United States, was merely that the moneyed capital invested in national banks should not be placed at a disadvantage as compared with moneyed capital in the hands of individual citizens of the State, and which is used for practically an identical purpose with that invested in the shares of national banks.

The latest case, in which the subject in discussion was treated with great elaboration, is that of Mercantile Bank *v.* New York, 121 U. S. 138, and from that case we quote the following as showing the view taken by the Federal court as to what is to be understood by the term "other moneyed capital." The court said: "The main

purpose of Congress in fixing limits to State taxation on investments in the shares of national banks was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy. Applying this rule of construction, we are led, in the first place, to consider the meaning of the words 'other moneyed capital,' as used in the statute. Of course it includes shares in national banks; the use of the word 'other' re-
38 quires that. If bank shares were not moneyed capital, the word 'other,' in this connection, would be without significance. But 'moneyed capital' does not mean all capital the value of which is measured in terms of money. In this sense, all kinds of real and personal property would be embraced by it, for they all have an estimated value as the subjects of sale. Neither does it necessarily include all forms of investment in which the interest of the owner is expressed in money. Shares of stock in railroad companies, mining companies, manufacturing companies, and other corporations are represented by certificates showing that the owner is entitled to an interest, expressed in money value, in the entire capital and property of the corporation; but the property of the corporation, which constitutes its invested capital, may consist mainly of real and personal property, which, in the hands of individuals, no one would think of calling 'moneyed capital,' and its business may not consist in any kind of dealing in money or commercial representatives of money. So far as the policy of the Government in reference to national banks is concerned, it is indifferent how the States may choose to tax such corporations as those just mentioned or the interest of individuals in them, or whether they should be taxed at all. Whether property interests in railroads, in manufacturing enterprises, in mining investments, and others of that description, are taxed or exempt from taxation, in the contemplation of the law, would have no effect upon the success of national banks. There is no reason, therefore, to suppose that Congress intended, in respect to these matters, to interfere with the power and policy of the States. The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans; and dealing in negotiable securities issued by the Government, State and national, and municipal and other corporations. These are the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes it, in the eye of this statute, 'moneyed capital.' Corporations and individuals carrying on these operations do come in to competition with the business of national banks, and capital in the hands of individuals thus employed is what is intended to be described by the act of Congress. That the words of the law must be so limited appears

from another consideration; they do not embrace any moneyed capital, in the sense just defined, except that in the hands of individual citizens. This excludes moneyed capital in the hands of corporations, although the business of some corporations may be such as to make the shares therein belonging to individual moneyed capital in their hands, as in the case
39 of banks. A railroad company, a mining company, an insurance company, or any other corporation of that description, may have a large part of its capital invested in securities payable in money and so may be the owners of moneyed capital; but, as we have already seen, the shares of stock in such companies held by individuals are not moneyed capital. The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as 'personal property.' * * * This definition of moneyed capital in the hands of individuals seems to us to be the idea of the law, and ample enough to embrace and secure its whole purpose and policy." In Palmer *v.* McMahon, 133 U. S., 660, the court said: "We have also held that because a State statute does not provide for the taxation of shares in corporations other than banks it does not follow that the tax on moneyed capital invested in bank shares is at a greater rate than that of the moneyed capital on individual citizens invested in other corporations; nor are the shareholders in national banks discriminated against because the taxation of such other corporations is arrived at under a separate system;" citing Mercantile Bank *v.* New York, *supra*. And in Talbott *v.* Silver Bow Co., 139 U. S., 438, where the question was whether, because the capital stock of certain mining and other corporations in the Territory of Montana were not taxed, the shares of a national bank could be assessed to the owner thereof, the court quoted from its opinion in Mercantile Bank *v.* New York as follows: "The term 'moneyed capital,' as used in the Revised Statutes (§ 5219), respecting State taxation of shares in national banks, embraces capital employed in national banks and capital employed by individuals when the object of their business is the making of profit by the use of their moneyed capital as money—as in banking, as that business is defined in the opinion of the court."

The allegations of this complaint nowhere show that any moneyed capital of the character defined by the Federal Supreme Court was omitted or intended to be omitted by the assessors; or, if the intention

of the complaint be to cover any such existing cases, the allegations are so general and indefinite that they could not be made
40 the basis of individual action. In order to make out a case for the interference of the courts, it must appear that either by reason of the law or through the action of the assessors some considerable moneyed capital which is employed by individuals in the business of making profit by the use of their moneyed capital as money is permitted to escape taxation. The non-taxation of what are termed "credits" in the opinion of the attorney general alluded to would not suffice. Judgment affirmed.

STILES, *J.*

We concur.
DUNBAR, *C. J.*
HOYT, *J.*, AND
SCOTT, *J.*

41–44 In the Supreme Court of the State of Washington.

FIRST NATIONAL BANK OF ABERDEEN, Appellant,
vs.
THE COUNTY OF CHEHALIS *et al.*, Respondents.
} No. 760. Judgment.

MONDAY, *May 8th*, 1893.

This cause having been heretofore submitted to the court on the transcript of the record of the superior court of Chehalis county and upon the argument of counsel, and the court having fully considered the same and being fully advised in the premises and having filed its opinion in writing, it is now, on this 8th day of May, A. D. 1893, on motion of James A. Haight, Esquire, of counsel for respondents, considered, adjudged, and decreed that the judgment of the said superior court be, and the same is hereby, affirmed with costs, and that the said County of Chehalis and J. M. Carter, treasurer of said county, have and recover of and from the said First National Bank of Aberdeen the costs of this action, taxed and allowed at $32.00, and that execution issue therefor; and it is further ordered that this cause be remitted to the said superior court for further proceedings in accordance with the opinion herein filed, and that the petition for rehearing herein be, and the same is hereby, denied.

Entered Journal, vol. 2, p. 317.

45 In the Supreme Court of the United States.

FIRST NATIONAL BANK OF ABERDEEN, Plaintiff in Error,
vs.
THE COUNTY OF CHEHALIS and J. M. CARTER, as County Treasurer and *ex Officio* Collector of Taxes of Chehalis County, State of Washington, Defendants in Error.

Assignment of Errors.

Now comes the plaintiff in the above-entitled case and says that in the record and proceedings therein there is manifest error in this, to wit:

I.

That the assessment complained of by the plaintiff in said action was an assessment *in solido* to the plaintiff as the owner of the whole number of shares of its capital stock and amounted to the assessment and taxation of the capital of the plaintiff and was in contravention of the Constitution of the United States and of sections 5214 and 5219 of the Revised Statutes of the United States, and the supreme court of Washington erred in not so holding.

II.

That section 21 of the revenue law of the State of Washington approved March 9th, 1891, entitled "An act to provide for
46 the assessment and collection of taxes in the State of Washington and declaring an emergency," under which the capital stock of the plaintiff was assessed and taxed, was and is in conflict with the Constitution of the United States, and with sections 5214 and 5219 of the Revised Statutes of the United States, and the supreme court of Washington erred in not so holding.

III.

That the form of assessment adopted by the assessor of the county of Chehalis, State of Washington, resulted in an assessment of the capital of the plaintiff and the taxation thereof under authority claimed under the State of Washington under the provisions of said act of March 9th, 1891, of said State of Washington, and was forbidden by the Constitution of the United States and said sections 5214 and 5219 of the Revised Statutes of the United States, and the supreme court of Washington erred in not so holding.

IV.

That the supreme court of Washington erred in sustaining the validity of section 21 of said act of March 9th, 1891, of the State of Washington, the validity of which section was drawn in question on the ground that the same was repugnant to the Constitution of the United States and to sections 5214 and 5219 of the Revised Statutes of the United States.

47 V.

That the supreme court of the State of Washington erred in sustaining the authority of the assessor of Chehalis county, State of Washington, exercised under said act of March 9th, 1891, of the State of Washington, the validity of which was denied by the plaintiff upon the ground that the same was repugnant to the Constitution of the United States and said sections 5214 and 5219 of the Revised Statutes of the United States.

VI.

That the supreme court of the State of Washington erred in not holding that the taxation of the shares of capital stock of the plaintiff was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of the State of Washington, and therefore conflicted with section 5219 of the Revised Statutes of the United States.

VII.

That the supreme court of the State of Washington erred in not holding that the exemption of $14,237,400 of moneyed capital in the hands of individual citizens of the State out of a total moneyed capital in said State of $25,237,400 was an exemption of so large a part relatively of the entire moneyed capital of said State as to amount to a discrimination against moneyed capital, amount-
48 ing to $11,000,000 not so exempted, of which $7,000,000 was invested in shares of national banks.

VIII.

That the supreme court of the State of Washington erred in not holding that the taxation of the shares of national banks in the State of Washington, including the plaintiff, at not less than 85 per cent. of their par value, while the shares of national banks organized under the laws of the State of Washington were assessed and taxed at not exceeding 67 per cent. of their par value and while $14,237,400 of other moneyed capital in the hands of individual citizens of the State of Washington was exempt, where the total moneyed capital in the State of Washington, including that invested in the shares of national banks and banks organized under the laws of said State, amounted to the sum of $25,237,400, was a discrimination against the shares of national banks and in favor of moneyed capital in the hands of individual citizens of said State, and for that reason the assessment complained of was wrongful.

IX.

The supreme court of the State of Washington erred in not holding that the intentional omission from assessment and taxation of $14,237,400 of moneyed capital in the hands of individual citizens of said State by the taxing officers of said State out of the
49 total moneyed capital represented by shares of national banks amounting to $7,000,000 was a discrimination against

the shares of stock in said national banks which entitled said banks, including the plaintiff, which was so assessed and taxed, to relief from said assessment and taxation.

X.

That the supreme court of the State of Washington erred in not holding that the complaint of the plaintiff showed upon its face a violation by the taxing officers of the State of Washington and of Chehalis county, in said State, of the Constitution of the United States and of sections 5214 and 5219 of the Revised Statutes of the United States.

XI.

That the supreme court of the State of Washington erred in going outside of the record of said case and finding facts no evidence of which was before the court.

XII.

That the supreme court of the State of Washington erred in not holding that even if section 21 of the act of Washington approved March 9th, 1891, entitled "An act to provide for the assessment and collection of taxes in the State of Washington and declaring an emergency," was valid upon its face, nevertheless the manner in which it was enforced by the taxing officers of said State of Washington and of the county of Chehalis, in said State, was a
50 violation of the Constitution of the United States and of said sections 5214 and 5219 of the Revised Statutes of the United States.

XIII.

That the supreme court of the State of Washington erred in not holding that said section of said act was upon its face in conflict with the Constitution of the United States and with said sections 5214 and 5219 of the Revised Statutes of the United States, and as said section 21 of said act was the only law of said State of Washington under which it was claimed the shares of the plaintiff's capital stock could be assessed and taxed said shares were relieved from assessment and taxation because said act and the manner of its enforcement were illegal and void.

XIV.

That the supreme court of the State of Washington erred in not holding that if said section 21 of said act of March 9th, 1891, of the State of Washington was void an assessment and taxation of the shares of capital stock of the plaintiff and the enforcement thereof would be depriving the plaintiff and its stockholders of their property without due process of law, and therefore in violation of the Constitution of the United States.

XV.

That the supreme court of the State of Washington erred in not holding that the allegations of the complaint, being admitted
51 by the demurrer, showed a plain and clear case of violation of the Constitution of the United States and of sections 5214 and 5219 of the Revised Statutes of the United States by the taxing officers of the State of Washington and the county of Chehalis, in said State, whereby the plaintiff and its stockholders were deprived of the equal protection of the law and of their property without due process of law and of the protection of sections 5214 and 5219 of the Revised Statutes of the United States.

XVI.

That the supreme court of the State of Washington erred in not holding that the complaint of the plaintiff stated facts sufficient to constitute a cause of action and sufficient to entitle the plaintiff to a perpetual injunction in said case restraining the county of Chehalis and its county treasurer, as collector of taxes in said county, from collecting the tax from the plaintiff.

XVII.

That the supreme court of the State of Washington erred in not sustaining the claim of the plaintiff to an exemption from taxation of the shares of the capital stock of the plaintiff because assessed at a greater rate than other moneyed capital in the hands of individual citizens of the State of Washington; which said exemption was especially set up by the complaint of the plaintiff under the
52 provisions of sections 5214 and 5219 of the Revised Statutes of the United States and of the Constitution of the United States.

XVIII.

That the supreme court of the State of Washington erred in not holding that even if it was permissible for the State of Washington to enact a law providing for the assessment of national bank shares *in solido* to the national banks no such law has been enacted by said State, and that the assessment of the shares of the plaintiff *in solido* to the plaintiff was therefore illegal and void.

XIX.

That the supreme court of the State of Washington erred in not holding that the assessment of national bank shares in the State of Washington, including the shares of the plaintiff, was void because said assessment was in conflict with sections 1, 2, and 3 of article 7 of the constitution of said State of Washington.

XX.

That the supreme court of the State of Washington erred in holding that there was to be found in said revenue act of March

9th, 1891, any legal provision imposing or authorizing the imposition of a tax upon national banks, their shares or upon their shareholders on account of their shares, and also in not holding that all the provisions contained in said act upon the subject of the taxation of national banks, their shares and shareholders, were illegal
53 and void because in conflict with the Constitution and Revised Statutes of the United States, and particularly sections 5214 and 5219 of the Revised Statutes.

Wherefore the plaintiff prays that the judgment of the supreme court of the State of Washington be reversed, and that the defendants be required to answer the complaint of the plaintiff.

PRESTON, CARR & PRESTON,
JAMES B. HOWE,
M. J. COCHRAN, *Attorneys for Plaintiff.*

(Endorsed:) No. 760. In the Supreme Court of the United States. First National Bank of Aberdeen, plaintiff in error, *vs.* The County of Chehalis and J. M. Carter, as treasurer and *ex officio* collector of taxes of Chehalis county, State of Washington, defendants in error. Assignment of errors. Filed Jun- 6, 1893. C. S. Reinhart, clerk. Preston, Carr & Preston, J. B. Howe, and M. J. Cochran, attorneys for plaintiff, Seattle, Wash.

54 In the Supreme Court of the State of Washington.

First National Bank of Aberdeen, Plaintiff, *vs.* The County of Chehalis and J. M. Carter, as Treasurer and *ex Officio* Collector of Taxes for said County, Defendants.	No. 760. Order.

It appearing to the Honorable R. O. Dunbar, chief justice of the supreme court of the State of Washington, the highest court of said State and the court wherein final judgment was rendered in the above-entitled case in favor of the defendants in said case and against the plaintiff, in which said court the record of said case now is, by the petition of the plaintiff for a writ of error to the supreme court of the State of Washington and by the plaintiff's assignment of errors accompanying said petition for said writ and by the record in said case, that the said cause is one wherein was drawn in question the validity of section 21 of the act of the State of Washington approved March 9th, 1891, entitled "An act to provide for the assessment and collection of taxes in the State of Washington and declaring an emergency," on the ground that said section 21 of said act and the authority of the taxing officers of the county of Chehalis and of the State of Washington exercised thereunder were repugnant to the Constitution and laws of the United States and the decision of the supreme court of the State of Washington was in favor of the validity of said act and of the authority exercised thereunder, and that the above-entitled case is a proper case for an

allowance of the writ of error: Now, therefore, upon motion of Preston, Carr and Preston, J. E. Howe, and M. J. Cochran, attorneys for the plaintiff, it is—

Ordered that a writ of error to the supreme court of the State of Washington be, and the same is hereby, allowed.

Dated this sixth day of June, 1893.

R. O. DUNBAR,
Chief Justice of the Supreme Court of the State of Washington.

Entered Journal, vol. 2, pg. 353.

55 [Endorsed:] No. 760. In the supreme court of the State of Washington. First National Bank of Aberdeen, plaintiff in error, *vs.* County of Chehalis and J. M. Carter, as treasurer and *ex officio* collector of taxes for said county. Order. Filed Jun- 6, 1893. C. S. Reinhart, clerk. Preston, Carr & Preston, J. B. Howe, and M. J. Cochran, attorneys for plaintiff, Seattle, Wash.

56 In the Supreme Court of the United States.

FIRST NATIONAL BANK OF ABERDEEN, Plaintiff in Error,
vs.
THE COUNTY OF CHEHALIS and J. M. CARTER, as Treasurer and *ex Officio* Collector of Taxes for said County, Defendants in Error. } No. —.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the justices of the supreme court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Washington, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The First National Bank of Aberdeen, as plaintiff, and The County of Chehalis and J. M. Carter, as treasurer and *ex officio* collector of taxes of said county, as defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision *is* against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of said Constitution, treaty, statute, or commission, *and* manifest error hath happened, to the great damage of the First National
57 Bank of Aberdeen aforesaid, as by its complaint appears, we, being willing that error, if any hath been, should be duly cor-

rected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 5th day of August, 1893, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, the 6th day of June, in the year of our Lord 1893.

{ Seal United States Circuit Court, District of }
{ Washington, Northern Division. }

A. REEVES AYRES,
Clerk of the Circuit Court of the United States
for the District of Washington,
By R. M. HOPKINS, *Deputy.*

Allowed this 6th day of June, 1893.

R. O. DUNBAR,
Chief Justice of the Supreme Court
of the State of Washington.

58 [Endorsed:] 760. In the Supreme Court of the United States. First National Bank of Aberdeen, plaintiff, *vs.* County of Chehalis and J. M. Carter, as treasurer and *ex officio* collector of taxes for said county, defendants. Writ of error. Filed Jun- 6, 1893. C. S. Reinhart, clerk. Preston, Carr & Preston, J. B. Howe, and M. J. Cochran, attorneys for plaintiff.

59 In the Supreme Court of the United States.

FIRST NATIONAL BANK OF ABERDEEN, Plaintiff in Error,
vs.
THE COUNTY OF CHEHALIS and J. M. CARTER, as County Treasurer and *ex Officio* Collector of Taxes for Chehalis County, State of Washington, Defendants in Error. } No. —.

Know all men by these presents that we, The First National Bank of Aberdeen, as principal, and A. A. Phillips and John F. Gowey, as sureties, are firmly held and bound unto The County of Chehalis, in the State of Washington, and J. M. Carter, as county treasurer and *ex officio* collector of taxes of said county, in the full and just sum of two thousand dollars, to be paid to the said County of Chehalis and J. M. Carter, as county treasurer and tax-collector of said county, their successors or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 6th day of June, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas lately, at a session of the supreme court of the State of Washington, in a suit depending in said court between The
60 First National Bank of Aberdeen, as plaintiff, and The County of Chehalis and J. M. Carter, as county treasurer and *ex officio* tax-collector of said county of Chehalis, State of Washington, a final judgment was rendered by said supreme court of the State of Washington against the First National Bank of Aberdeen aforesaid and in favor of the said County of Chehalis and the said J. M. Carter, as county treasurer and tax-collector of said county, and the First National Bank of Aberdeen aforesaid having obtained a writ of error and filed the same with a copy thereof in the clerk's office of the said supreme court of the State of Washington to reverse said judgment in the aforesaid suit, and a citation directed to the said county of Chehalis, in the State of Washington, and the said J. M. Carter, as county treasurer of said county and *ex officio* collector of taxes of said county, citing and admonishing them and each of them to be and appear at the Supreme Court of the United States to be holden at Washington on the 5th day of August, 1893:

Now, the condition of the above obligation is such that if the First National Bank of Aberdeen aforesaid shall prosecute said writ of error to effect and answer all costs and damages and pay the tax, with penalty and interest, the collection of which is sought to be enjoined, if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE FIRST NATIONAL BANK OF ABERDEEN,
By H. A. HAYES, *Its Cashier.* [SEAL.]
A. A. PHILLIPS. [SEAL.]
JOHN F. GOWEY. [SEAL.]

Signed and delivered in presence of—

HENRY P. LEE.
L. W. OSTRANDER.

61 STATE OF WASHINGTON, }
County of Thurston, } *ss:*

Before me, a notary public in and for the State of Washington, residing at Olympia, in said State, personally appeared A. A. Phillips and John F. Gowey, who, being duly sworn, on oath each for himself says that he is one of the sureties on the foregoing bond and is a resident of Olympia, in the State of Washington, and is worth the sum of two thousand dollars over and above all of his debts and liabilities and exclusive of property exempt from execution.

A. A. PHILLIPS.
JOHN F. GOWEY.

Sworn to and subscribed before me this 6th day of June, 1893.

[Notarial Seal of H. P. Lee. Expiration of Commission, Feb. 27, 1894.]

H. P. LEE,
Notary Public for the State of Washington,
Residing at Olympia, in said State.

The foregoing bond and the sufficiency of the sureties thereon taken and approved by me this sixth day of June, 1893.

R. O. DUNBAR,
Chief Justice of the Supreme Court of the State of Washington.

(Endorsed:) No. 760. In the Supreme Court of the United States. First National Bank of Aberdeen, plaintiff, *vs.* County of Chehalis and J. M. Carter, as treasurer and *ex officio* collector of taxes for said county, defendants. Supersedeas bond. Filed Jun- 6, 1893. C. S. Reinhart, clerk. Preston, Carr & Preston, J. B. Howe and M. J. Cochran, attorneys for plaintiff.

62 In the Supreme Court of the State of Washington.

FIRST NATIONAL BANK OF ABERDEEN, Plaintiff,
vs.
THE COUNTY OF CHEHALIS, STATE OF WASHINGTON, and J. M. Carter, as Treasurer and *ex Officio* Collector of Taxes of said County, Defendants. } No. —.

The plaintiff in the above-entitled cause having filed its bond with good and sufficient sureties approved by the chief justice of the above-entitled court within sixty days after the denial of the plaintiff's petition for a rehearing in said court, which said bond was executed for the purpose of operating as a supersedeas upon the judgment rendered by said court, now, therefore, it is—

Ordered that all proceedings for the enforcement of said judgment be, and the same are hereby, restrained until the writ of error prosecuted by the plaintiff to the Supreme Court of the United States shall have been determined.

June sixth, 1893.

R. O. DUNBAR,
Chief Justice of the Supreme Court of the State of Washington.

Entered Journal, vol. 2, pg. 354.

63 [Endorsed:] No. 760. In the supreme court of the State of Washington. First National Bank of Aberdeen, plaintiff, *vs.* County of Chehalis and J. M. Carter, as treasurer and *ex officio* collector of taxes for said county, defendants. Order granting supersedeas. Filed Jun- 6, 1893. C. S. Reinhart, clerk. Preston, Carr & Preston, J. B. Howe and M. J. Cochran, attorneys for plaintiff.

64 UNITED STATES OF AMERICA, *ss:*

To J. M. Carter, as county treasurer of Chehalis county, State of Washington, and *ex officio* collector of taxes, and to The County of Chehalis, in said State, Greeting:

You and each of you are hereby cited and admonished to appear at the Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Washington, wherein The First National Bank of Aberdeen is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 6th day of June, 1893.

R. O. DUNBAR,
Chief Justice of the Supreme Court of the State of Washington.

65 [Endorsed:] 760. In the Supreme Court of the United States. First National Bank of Aberdeen, plaintiff, *vs.* County of Chehalis and J. M. Carter, as treasurer and *ex officio* collector of taxes for said county, defendants. Citation. Due service of the within, this 6th day of June, 1892, hereby admitted. James C. Haight, ass't att'y general. Preston, Carr & Preston, J. B. Howe and M. J. Cochran, attorneys for plaintiff. Filed Jun- 6, 1893. C. S. Reinhart, clerk.

66 In the Supreme Court of the State of Washington.

FIRST NATIONAL BANK OF ABERDEEN, Plaintiff, *vs.* THE COUNTY OF CHEHALIS *et al.*, Defendants. } No. 760. Certificate.

STATE OF WASHINGTON, *County of Thurston,* } *ss:*

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, hereby certify that the above and foregoing is a full, true, and correct transcript of so much of the record and proceedings in the above-entitled cause as I am required to transmit on appeal to the United States Supreme Court, and, in conformity to the writ of error heretofore issued and filed in my office, I herewith transmit said transcript, together with the original writ of error and the original citation issued herein, to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Olympia, Washington, this 26th day of July, A. D. 1893.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART,
Clerk Supreme Court of the State of Washington.

67 In the Supreme Court of the United States.

THE FIRST NATIONAL BANK OF ABERDEEN,
Plaintiff in Error,
against
THE COUNTY OF CHEHALIS and J. M. CARTER,
as Treasurer and *ex Officio* Tax-collector,
Defendants in Error.

No. —. Stipulation.

It is hereby stipulated and agreed by and between the undersigned counsel respectively for the plaintiff in error and defendant-in error in the above-entitled case that the following portions of the record now on file in the Supreme Court of the United States be printed for the hearing of said case, and that no other portions of said record need be printed, to wit:

Complaint, demurrer, judgment, decision of the supreme court of the State of Washington, petition for rehearing in the supreme court of the State of Washington, order denying petition, assignment of errors.

JAMES B. HOWE,
Counsel for Plaintiff in Error.
GEO. D. SCHOFIELD,
Pros. Att'y, Chehalis Co., Wash.,
Counsel for Defendants in Error.
W. C. JONES,
Attorney General, State of Washington.

68 [Endorsed:] Case No. 15,381. Supreme Court U. S., October term, 1893. Term No., 997. The First Nat'l Bank of Aberdeen, P. E., *vs.* The County of Chehalis *et al.* Stipulation as to parts of record to be printed. Office Supreme Court U. S. Filed Oct. 4, 1893. James H. McKenney, clerk.

Endorsed on cover: Case No. 15,381. Washington supreme court. Term No., 266. The First National Bank of Aberdeen, plaintiff in error, *vs.* The County of Chehalis and J. M. Carter, as treasurer and *ex officio* collector of taxes of said county. Filed August 21, 1893.

Office Supreme Court U.S.
FILED.
MAR 27 1896
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1895.

No. ~~206.~~ 38.

THE FIRST NATIONAL BANK OF ABERDEEN,
PLAINTIFF IN ERROR,

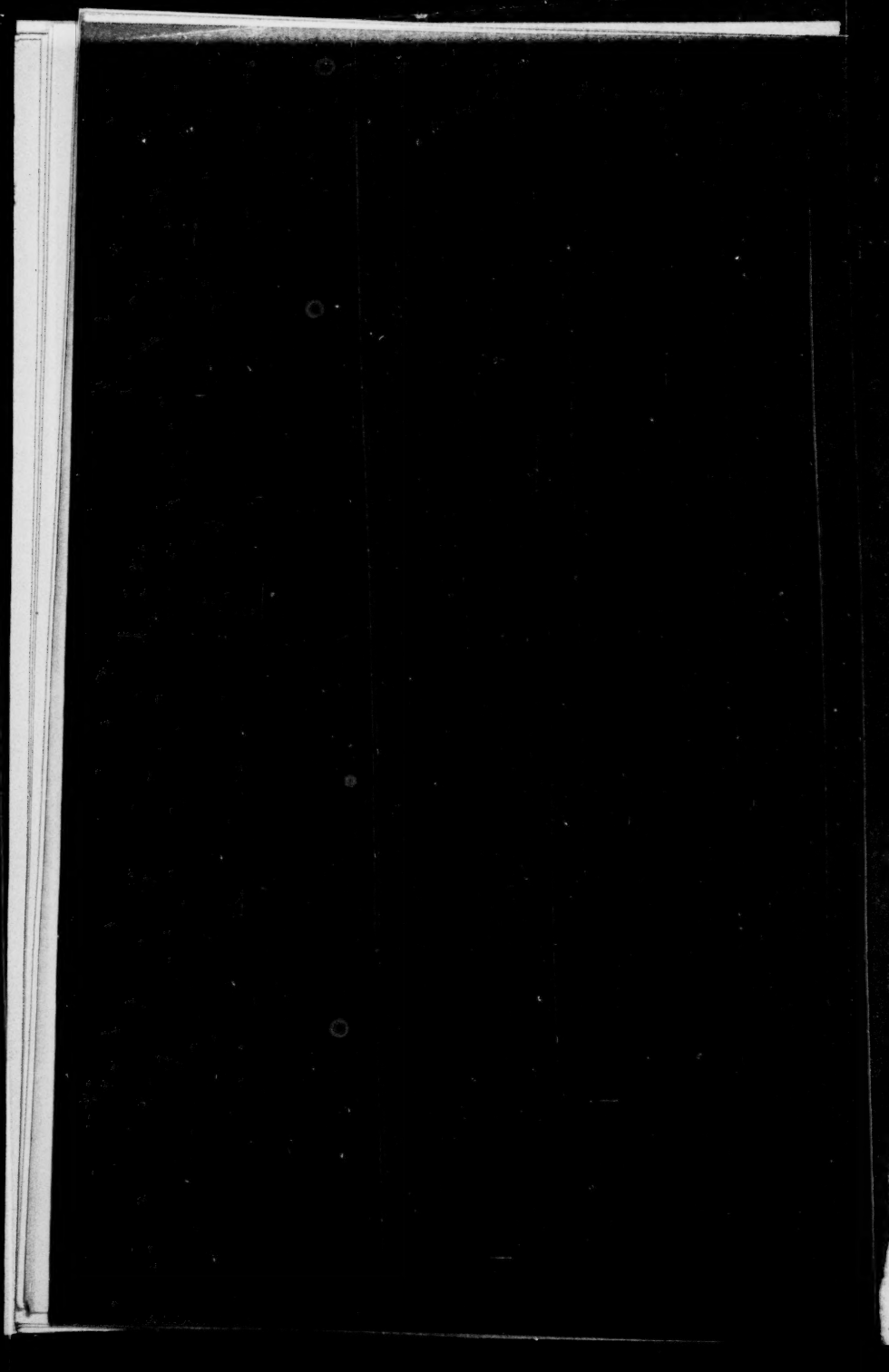
VS.

THE COUNTY OF CHEHALIS AND J. M. CARTER,
AS TREASURER AND EX-OFFICIO COLLECTOR OF TAXES OF SAID COUNTY, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

EUGENE M. CARR,
HAROLD PRESTON,
JAMES B. HOWE,
M. J. COCHRAN,
Counsel for Plaintiff in Error.



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1895.

No. 266.

THE FIRST NATIONAL BANK OF ABERDEEN,
PLAINTIFF IN ERROR,

VS.

THE COUNTY OF CHEHALIS AND J. M. CARTER,
AS TREASURER AND EX-OFFICIO COLLECTOR OF TAXES OF SAID COUNTY, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

STATEMENT.

The plaintiff in error, a national bank located in the County of Chehalis, in the State of Washington, instituted this action in the Superior Court of said County to enjoin the county and its treasurer and ex-officio collector of taxes from levying upon the time-lock of plaintiff's safe, and other personal property of the plaintiff, in order to satisfy a tax assessed upon the capital of the plaintiff, which assessment plaintiff alleged was void because forbidden by the Constitution of the United States and the provisions of Sections 5214 and 5219 of the Revised Statutes of the United States.—Folios 1-12. Defendants demurred to the complaint upon the ground that it did not state facts sufficient to constitute a cause of action.—Folios 23-24. The demurrer was sustained. The plaintiff elected to stand upon

its complaint and declined to amend, and, thereupon, a final decree was rendered dismissing the complaint, with costs to defendants.—Folios 25-32. Plaintiff appealed from said decree to the Supreme Court of the State of Washington, which court affirmed the decree appealed from on the ground that the laws of the state, under which the taxation was justified, and the acts of the taxing officers complained of, were not repugnant to any provisions of the Constitution of the United States or to Sections 5214 and 5219 of the Revised Statutes of the United States.

The plaintiff thereupon sued out a writ of error from this Court, which was allowed by the Chief Justice of the Supreme Court of the State, and was duly served.—Folios 56-57. A citation was duly issued and served.—Folios 64-65. Plaintiff in error filed its assignment of errors specifying the errors claimed by it to have been committed by the Supreme Court of the State.—Folios 45-52.

The errors assigned in the assignment of errors may be condensed, and, so condensed, the plaintiff in error relies upon the following specified errors for a reversal of the judgment of the Supreme Court of the State:

I.

That Section 21 of the Revenue Law of the State of Washington, approved March 9, 1891, entitled, "An act to provide for the assessment and collection of taxes in the State of Washington and declaring an emergency," under which the capital stock of the plaintiff was assessed and taxed, was and is in conflict with the Constitution of the United States and with Sections 5214 and 5219 of the Revised Statutes of the United States, and the Supreme Court of the State of Washington erred in not so holding.

II.

That the assessment complained of by the plaintiff in said action, was an assessment *in solido* to the plaintiff as the owner of the whole number of shares of its capital stock and amounted to the assessment and taxation of the capital of the plaintiff,

and was in contravention of the Constitution of the United States and of Sections 5214 and 5219 of the Revised Statutes of the United States, and the Supreme Court of Washington erred in not so holding.

III.

That the Supreme Court of the State of Washington erred in not holding that the taxation of the shares of the capital stock of the plaintiff was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens in the State of Washington, and, therefore, conflicted with Section 5219 of the Revised Statutes of the United States.

IV.

That the Supreme Court of the State of Washington erred in not holding that the exemption of $14,237,400 of moneyed capital in the hands of individual citizens of the state, out of a total moneyed capital in said state of $25,237,400, was an exemption of so large a part relatively of the entire moneyed capital of said state as to amount to a discrimination against moneyed capital amounting to $11,000,000 not so exempted, of which $7,000,000 was invested in shares of national banks.

V.

That the Supreme Court of the State of Washington erred in not holding that the allegations of the complaint being admitted by the demurrer, showed a plain and clear case of the violation of the Constitution of the United States and of Sections 5214 and 5219 of the Revised Statutes of the United States, by the taxing officers of the State of Washington and the County of Chehalis, in said state, whereby the plaintiff and its stockholders were deprived of the equal protection of the law, and of their property without due process of law, and of the protection of Sections 5214 and 5219 of the Revised Statutes of the United States.—Folios 45–53.

ARGUMENT.

ERRORS 1 AND 2.

The Supreme Court of the State of Washington erred in holding that plaintiff's complaint did not show that plaintiff's capital had been taxed in violation of the Constitution of the United States and of Sections 5214 and 5219 of the Revised Statutes of the United States.

The assessment in the case at bar was made under Section 21 of an act of the Legislature of the State of Washington entitled, "An act to provide for the assessment and collection of taxes in the State of Washington, and declaring an emergency," approved March 9, 1891, Laws of Washington, 1891, pp. 280–289. Said section is as follows:

"Section 21. Every individual, firm, corporation or association of persons, carrying on a general banking business in this state, whether the same has been organized under the banking laws of this state or the United States, or conducted under the style of private bankers, shall be assessed and taxed in the county, town, city or village where such bank or banking association is located and not elsewhere, in the following manner: Annually, at such times as provided for listing property for taxation, every such bank or banking association as contemplated in this section shall, by its accounting officer, furnish the county or city assessor a statement, verified by oath, giving the amount of paid-up capital stock, the amount of surplus or reserve fund and the amount of undivided profits of such bank or banking association. The aggregate amount of capital, surplus, and undivided profits shall be assessed and taxed as other like property in the state is assessed and taxed: Provided, At the time of listing the capital stock, the amount and description of its legally authorized investments in real estate shall be assessed and taxed as other real estate is assessed and taxed under this act, and the assessor shall deduct the amount of such investments in real estate from the aggregate amount of such capital, surplus, and undivided profits, and the remainder then taxed as above provided."

The statute is plain and there is no room for construction. It would be difficult to use any other language than that used

to convey the idea that the thing to be assessad and taxed was the capital of the bank.

Section 21 is therefore void upon its face.

Van Allen vs. Assessors, 3 Wall., 573.
Bradley vs. People, 4 Wall., 459.
National Bank vs. Commonwealth, 9 Wall., 353.

The Supreme Court, however, held that Section 21 was not void when construed in connection with Section 23 of the same act.

Paul vs. McGraw, 3 Wash., 296–305.

Section 23 is as follows:

"Each bank and banking association shall be liable to pay any taxes assessed against them as the agent of each of its shareholders, owners or owner under the provisions of this act, and may pay the same out of their undivided profit account or charge the same to their expense account, or to the accounts of such shareholders, owners or owner in proportion to their ownership."

So far as Section 23 of the revenue act of 1891 requires the bank to pay the tax and charge same to its *expense* account, the tax is a direct tax upon the bank itself.

City of Boston vs. Beal, 51 Federal Reporter, 306.
Affirmed, 55 Federal Reporter, 26.

So far as said Section 23 of the said revenue act requires the bank to either pay the tax out of undivided profit account or charge the same to expense account or to the stockholders, the liability to pay, (as construed by the taxing officers in this case by their acts, and by the State Court) is absolute and immediate without regard to ability to pay, existence of undivided profits, or condition of account of stockholders.

Therefore the tax is a tax upon the bank.

It is respectfully submitted that Section 23 does nothing more than provide a method for the collection, while Section 21 is the only authority for the assessment of the tax.

That a lawful provision for collecting a tax cannot impart validity to an unlawful provision for its assessment, seems too clear for argument; yet the Supreme Court of the State seems to confound the method of collection with the power to assess, and holds that the end justifies the means.

ERROR No. 2.

The assessment complained of by the plaintiff in said action was an assessment in solido to the plaintiff as the owner of the whole number of shares of its capital stock and amounted to the assessment and taxation of the capital of the plaintiff, and was in contravention of the Constitution of the United States and of Sections 5214 and 5219 of the Revised Statutes of the United States, and the Supreme Court of Washington erred in not so holding.

Such an assessment and levy is in violation of and is forbidden by the provisions of the Act of Congress permitting an assessment by the State of the shares of National banks to the individual owners thereof, and is therefore void.

Revised Statutes of United States, Section 5219.

National banks may be taxed by the state only to the extent granted by the permissive provisions of said Section 5219.

Covington City National Bank vs. City of Covington, et al., 21 Fed. Rep., 484.
Osborn vs. U. S. Bank, 9 Wheat., 738.

The proprietary interest of the individual in shares of the stock of a national bank, owned by him, is subject to taxation by the state only to the extent granted by the permissive provisions of said section.

Mercantile National Bank vs. City of New York, 28 Fed. Rep., 776.
People vs. Weaver, 100 U. S. Reports, 539–543.
Boyer vs. Boyer, 113 U. S., 689.
Wasson vs. First National Bank, 107 Ind., 206.
Maguire vs. Board of Revenue, 71 Ala., 401.

An assessment and the taxation of all the shares of the stock of a national bank *in solido* to the bank direct, as owner thereof, constituted a tax upon the bank forbidden by said Section 5219 and rendered void thereby.

First National Bank of Richmond vs. City of Richmond, et al., 39 Fed. Rep., 309.

National Bank of Virginia vs. City of Richmond, et al., 42 Fed. Rep., 877.

First National Bank of Leoti vs. Fisher, 45 Kan., 726.

Collins vs. Chicago, 4 Bissell, 472.

Miller vs. First National Bank, 46 Ohio St., 424.

In the case last cited, the invalidity of such a form of taxation was clearly pointed out. In that case the court said:

"As regards the bank, there is but one question in the case that needs to be determined,—for the determination of it will dispose of all the others that have been raised—that is, whether the shares of stock in a national bank are to be listed for taxation in the names of the shareholders or in the name of the bank. The power of a state to impose any tax upon such shares is conferred by the statutes of the United States.—Section 5219, Revised Statutes. This is not controverted. It is also true that the property of a national bank, other than its realty, cannot be subjected to taxation by a state or any of its subdivisions. The power conferred by the section just referred to, is to include the 'shares' in the valuation of the personal property of the 'owner' or 'holder' of such shares. The bank does not own the shares of its capital. It owns the capital and the shares are owned by its shareholders. The capital is corporate property; the shares in it are the individual property of its shareholders. It is the latter that may be taxed, and not the former. No authority is conferred to assess them, the tax is against the bank itself; and, to so assess them, would be but another form of taxing the capital of the bank itself, which no one contends could be done, without the authority of Congress. A share in a bank is but a fractional part of its capital owned by one who contributed an equivalent part of the capital, or his transferee; and the aggregate of all the shares held by individuals in a bank is equal to the aggregate of its capital; so that, if all the shares in a bank were assessed for taxation in its name, and payment of a tax required of it, the effect would

be precisely the same as a tax upon the aggregate capital of the bank. Again, as the shares are to be assessed for taxation according to their true value in money, a tax so levied would extend to and include all the property of the bank, its personalty, in the valuation placed on the shares in its capital stock, and its realty, under the exception contained in Section 5219, Revised Statutes of United States. It seems, then, to follow, as a necessary result, that shares in a national bank must be assessed for taxation in the names of the owners of them, and not in the name of the bank itself. The language of the statute under which the power is conferred on a state to tax such shares is such; and the power conferred must be confined to the language; or the exemption of the bank itself from taxation may be reduced to an empty expression."

The Supreme Court of the State of Washington proceeded upon the theory that Section 23 of the Act of 1891, provided a method of garnishing, and in support of its decision cited the case of Bank vs. Commonwealth, 9 Wall., 353.—Folio 34.

Paul vs. McGraw, supra.

An examination of that case will show that it has no application to the case at bar. In that case, it was sought to hold the bank liable for a tax assessed upon the shares of its stockholders, but which assessment had been made against the stockholders. In the case at bar, the assessment was made directly to the bank and not to the stockholders. In the case cited, suit was brought against the bank, and this Court held that the suit was in the nature of a garnishment proceeding.

In the case at bar, the bank was not sued at all. The collector of taxes was about to levy upon the property of the bank before obtaining a judgment against the bank, and without regard to the question of the indebtedness of the bank to its shareholders.

The distinction between the two cases is clearly pointed out in the case of Hershire vs. First Nat. Bank, 35 Ia., 272.

ERRORS NO. 3, 4 AND 5.

That the Supreme Court of the State of Washington erred in not holding that the complaint showed that the taxation of the shares of

capital stock of the plaintiff was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of the State of Washington, and therefore, was void, under Section 5219 of the Revised Statutes of the United States.

The total moneyed capital owned by residents of the County of Chehalis on April 1, 1891, invested in loans at interest and upon notes and securities, exclusive of that invested in shares of stock in national banks located in said county, amounted to the sum of $237,400.—Folio 7. This "other moneyed capital" was "in the hands of individual citizens of the state," was taxable, but was purposely omitted from taxation for said year.—Folio 10. The total moneyed capital owned on April 1, 1891, by citizens of the state, resident in the state, but elsewhere than in said county, exclusive of that invested in shares of stock in banks located elsewhere in said state than in said county, and exclusive of the other moneyed capital just above referred to, amounted to $14,000,000. This "other moneyed capital" was also "other moneyed capital in the hands of individual citizens of the state," was taxable and was omitted from taxation. This other moneyed capital was invested in loans and securities payable to resident citizens of said state and was owing from other resident citizens of said state.

The moneyed capital in the state, owned by resident citizens of the state on that day, was distributed as follows:

First class above referred to	$ 237,400 00
Second class above referred to	14,000,000 00
Capitalization of national banks	7,000,000 00
Capitalization of state banks	4,000,000 00
Investments in stocks and bonds of insurance, wharf and gas companies	762,600 00
Total	$26,000,000 00

—Folios 8–9.

The lowest valuation placed on national bank stock in the state in the assessment of taxes for the year 1891 was $85.00 per share.

The total valuation placed upon bank stock in the assessment

throughout the state for that year was (including therein investments in stocks and bonds in insurance, wharf and gas companies) $8,205,503.

The total valuation, therefore, placed upon shares in national banks was $5,950,000, and eliminating the $762,600 from consideration, the valuation placed on $4,000,000 invested in stock of banks incorporated under the laws of the state was $2,255,503.

It is seen, therefore, that while the shares in national banks were uniformly assessed at eighty-five per cent of their par value, the shares in banks organized under the laws of the state were assessed uniformly at only fifty-six and a fraction per cent, while $14,237,000 of moneyed capital in the hands of individual citizens, out of a total moneyed capital amounting in round numbers to $25,000,000, was designedly omitted from taxation.

It cannot be doubted from the foregoing statement that the withdrawal from taxation of over fifty per cent of the total moneyed capital in the hands of individual citizens, had the effect of taxing national bank shares at a greater rate than the remaining moneyed capital in the hands of individual citizens was taxed.

The tax levied in the County of Chehalis was 11 29-40 mills on each dollar. If it was necessary to levy that amount to produce the revenue required by the state, it is clear that the rate of taxation would have been much lower had the $14,237,000 been added to the amount upon which the tax was levied.

That an intentional failure to assess, speaking in round numbers, $14,000,000 out of a total of $25,000,000 of moneyed capital in the hands of individual citizens, is an unlawful discrimination against the moneyed capital that is taxed, seems too plain to admit of argument.

The Supreme Court of the state says, in its opinion in the case at bar, that the allegations of the complaint are not sufficiently definite to enable that court to ascertain therefrom the character of the institutions in which the moneyed capital is,

which is said to be unassessed, so that the Court might say that the moneyed capital therein described was or was not assessable, or if not assessed, that the failure to assess was a discrimination against the national banks.— Folio 36.

The Supreme Court then refers to paragraph 11 of the complaint (folios 10–11), which alleges that said moneyed capital was intentionally omitted from assessment in pursuance of an opinion of the Attorney-General of the state, given to the assessors, at their request for advice, and says:

"The question answered by the Attorney-General was, 'Are credits or mortgages taxable under the law of March 9, 1891?' and the answer is in the negative. Mortgages are easily enough understood, but when the term 'credits' is used, a much larger class of property is meant.

"In this opinion, however, the writer evidently refers to mere debts due from one person to another and the example which he gives and refers to most frequently is a promissory note secured by a real or chattel mortgage or solvent signers, and there was no reference to the credits of banks, bankers, brokers or stock jobbers, or bonds or stock other than bank stock or shares of bank stock, or shares of banking, wharfage, gas, water or insurance companies. Accounts, promissory notes and mortgages constitute the subject matter of the opinion. If, therefore, the action of the assessors was based upon this estimate of the law officer of the state and went no further, the allegations of the complaint would certainly turn out to be unsupported."

Although the amendment of the complaint by the Supreme Court, by adding thereto the opinion of the attorney general, was not made upon the motion of either party to the cause, it does not, we submit, strengthen the conclusion reached by the Court or weaken the allegations of the complaint.

The Court says:

"The allegations of the complaint nowhere show that any moneyed capital of the character defined by the Federal Supreme Court was omitted or intended to be omitted by the assessors, or if the intention of the complaint be to cover any such existing cases, the allegations are so general and indefinite that they could not be made the basis of individual action. In

order to make out a case for the interference of the courts, it must appear that either by reason of the law or through the action of the assessors, some considerable moneyed capital which is employed by individuals in the business of making profit by the use of their moneyed capital as money is permitted to escape taxation. The non-taxation of what are termed credits in the opinion of the attorney general alluded to would not suffice."

It does appear, however, from the complaint, that the omitted capital,

1. Was moneyed capital;
2. Was taxable;
3. Was not invested in bank stock or banks;
4. Was owned by citizens;
5. That those citizens *resided*, and therefore were *individuals;*
6. Those citizens resided in Chehalis County;
7. The moneyed capital was subject to investment;
8. Was loaned money;
9. Was loaned to other individual resident citizens;
10. The said omitted money capital was *invested* in *loans* and securities; therefore, did not include the *accounts* said by the Supreme Court to have been one of the other three kind of credits referred to in the opinion of the attorney general as being *mere debts* due from one individual to another, although it is equally clear that it embraced notes and mortgages due from one individual to another and thus invested in loans and (in cases of securities taken) securities. It is also clear that while it would not embrace, for example, a store bill, or a demand for a tort committed, it would embrace money loaned by one individual to another, as an investment of money to make money;
11. That it was not invested in either the stocks or bonds of insurance, wharf or gas companies or other corporations;
12. Was loaned as an investment;
13. That it was a very material part, relatively, of the total other moneyed capital in the hands of individual citizens within the jurisdiction levying the tax upon the shares in national banks.

The Supreme Court of the State in considering the allegations of the complaint, applied a very different rule of law in testing the sufficiency of the complaint from that which in Holland vs. Isaacs, 4 Wash., 54, it announced was the correct one.

"As to the rule of construction to be recognized, Section 94 (Code) provides that: In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed. All prior forms of pleading were abolished by the Code and it prescribed what they should be thereafter and also the rule by which their sufficiency should be determined.

"In Chambers vs. Hoover, 3 Wash. Ter., 110, in speaking of the complaint in that case, to which a demurrer had been interposed, Turner, J., says:

'The averments of this pleading are vague and indefinite and it is defective in other respects, yet when bolstered by the rule of liberal construction commanded by the code, we think we discern a cause of action. A suitor is no longer to be turned out of court if by making all reasonable intendments in his favor, enough can be seized hold of in his pleadings to show that he has rights which ought to be enforced. He may be required on motion to conform his statements to the rules of good pleading, and if he refuse, may be turned out of court, but as against a demurrer, the office of which is to raise a substantial issue on the law of the case and not on the law of practice and pleading, evidentiary facts and even inferences from averments amounting to mere conclusions of law, will be considered in his favor.' * * *

"Under our practice, the old rule that the pleading must be most strongly construed against the pleader is not recognized. It must be liberally construed with an aim to arrive at substantial justice between the parties."

We submit, however, that we are not, in order to obtain a reversal of the judgment of the Supreme Court of the state, compelled to invoke the liberal rule of pleading formally announced by that court.

We feel confident that tested by the rule established by this Court in Boyer vs. Boyer, 113 U. S., 689, and Mercantile Bank vs. New York, 121 U. S., 138, the complaint is sufficient to require an answer from the defendants.

A comparison of the language of the complaint with that of the opinion in the case last cited, will convince the Court that we are justified in our feeling of confidence.

COMPLAINT.

That on the 1st day of April, 1891, there existed in the County of Chehalis, State of Washington, taxable moneyed capital (other than and beyond that invested in shares of stock of national banks and banking business), owned by citizens of said state, resident in said county, and there invested in loans and securities to them payable and owing by other citizens of said state, residing in said county, of a vast amount, to-wit: exceeding the sum of $237,400.—Paragraph 13, folio 7.

Similar language in paragraph 14, folio 8, in reference to $14,000,000, owned by citizens of the state residing in the state and outside of said county.

OPINION OF THIS COURT.

"The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed, is invested for that purpose in securities, by way of loan, discount or otherwise, which are, from time to time, according to the rules of the business, reduced again to money and re-invested. It includes money, in the hands of individuals employed in a similar way, invested in loans or in securities for the payment of money, either as an investment of a permanent character or temporarily, with a view to sale or re-payment or re-investment. In this way, the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property."

Mercantile Bank vs. New York, 121 U. S., 138.

It seems to us that the language of the complaint is almost the same as that used by this Court in the opinion, from which the foregoing extract is taken.

With all due respect to the Supreme Court of the state, it is

respectfully submitted that at the time the question of the taxation of the shares of national banks was before it, it felt constrained to construe out of existence the rule laid down by this Court for determining whether the provisions of Section 5219 of the Revised Statutes of the United States had been violated.

That this is true is made even more apparent by the decision of the Supreme Court of the state, reported under the title of Washington National Bank vs. The County of King, 9 Washington, 607, decided October 22, 1894. It is not surprising, therefore, that when on January 1, 1895, in compliance with the mandate of the Constitution of the State, the Supreme Court of the State submitted to the Governor of the State its report of apparent defects in the laws of the State, it stated therein as follows:

"Twice this Court has been called upon to review cases involving the assessment of the stock of national banks for taxation. The First National Bank of Aberdeen vs. The County of Chahalis, 6 Washington, 64; Washington National Bank vs. The County of King, decided October 22, 1894. In both cases the assessments were upheld, but in both, the decision was arrived at only upon a construction of the law which was not satisfactory to this Court, to say the least.

"These cases have been appealed to the Supreme Court of the United States, and it is not at all beyond the bounds of possibility that that tribunal may come to a different conclusion. The trouble with the statute upon this subject is that it is obscure, involved and uncertain, and there is great danger that unless it is revised, there will come a time when the state will be practically without a law for the proper taxation of the property of banks and other financial institutions and particularly national banks.

"A careful revision of this subject should be made, with a special view to the avoidance of double taxation and in the light of the experience of other states, to the end that this vexed question may be set at rest."

Public Documents State of Washington, 1894–5, Report of Supreme Court, paragraph 6, pp. 6–7.

In the case of Puget Sound National Bank of Seattle vs.

King County et al., 57 Fed. Rep., p. 433, the Circuit Court for the District of Washington, in overruling a demurrer to a bill, substantially similar to the complaint in the case at bar, said:

"The bill does explicit ly set forth the fact and the manner of discrimination against shareholders of national bank stock in the valuation thereof for assessment as compared with the assessment for the same year, of other moneyed capital in the hands of individual citizens of this state, so as to make a profit from the use thereof as money."

* * * * * * * *

"It is true that the bill in this case does not particularize the discriminations complained of or specify instances with any greater minuteness than the bill in the case of the First National Bank of Aberdeen vs. County of Chehalis, in which the Supreme Court of this State affirmed a judgment in favor of the defendant upon a demurrer to the bill. But it is also true that the bill before me is fully as definite and specific in its statement of the facts constituting discriminations as the bill in the case Boyer vs. Boyer, *supra*, in which the Supreme Court of the United States held that an answer should have been required, and reversed the decision of the Supreme Court of Pennsylvania, sustaining a demurrer to the bill."

That the moneyed capital omitted from taxation was other moneyed capital in the hands of individual citizens, within the meaning of Section 5219 of the Revised Statutes of the United States, is clear.

Mercantile Bank vs. New York, 121 U. S., 138.
Boyer vs. Boyer, 113 U. S., 689.
Talbott vs. Board of Commissioners, 139 U. S., 438.
Wasson vs. First Nat. Bank, 107 Ind., 206.
Maguire vs. Board of Revenue, 71 Ala., 401.

That such omission resulted in the taxation of the shares in national banks at a rate greater than that imposed on other moneyed capital in the hands of individual citizens, is equally clear. This discrimination against shares in national banks violated Section 5219 of the Revised Statutes of the United States, and rendered the assessment void.

Boyer vs. Boyer, supra.
Mercantile Bank vs. New York, supra.

Supervisers vs. Stanley, 105 U. S., 317-318.
Pelton vs. National Bank, 101 U. S., 143.
Cummings vs. National Bank, 101 U. S., 153.
First National Bank vs. Lindsley, 45 Fed. Rep., 620.
Wasson vs. First National Bank, supra.
Puget Sound National Bank vs. King County, 57 Fed. Rep. 433.

The omission of the above amount of moneyed capital in the hands of individual citizens from assessment was premeditated, and was the result of an agreement between the county assessors throughout the state.—Folio 10.

The tax to complainant was therefore void.

Andrews vs. King County, 1 Wash., 46.

This would be true even though the revenue law of this state forbade such omission.

First National Bank of Toledo vs. Treasurer, 25 Fed. Rep., 749.
Yick Wo vs. Hopkins, 118 U. S., 356.

No question has been made that the remedy by which plaintiff sought to obtain redress was the proper one. A suit in equity praying an injunction to stay the collection of the tax and seeking a decree annulling the assessment, was the proper remedy in the case.

Cummings vs. National Bank, 101 U. S., 153.
Andrews vs. King County, 1 Wash., 46 (in which Cummings vs. National Bank is cited with express approval).
Hills vs. Exchange Bank, 105 U. S., 319 (affirming on this point, 5 Fed., 253).
Covington City National Bank vs. City of Covington, 21 Fed., 484.
First National Bank of Toledo vs. Treasurer, 25 Fed. Rep., 749.
First National Bank vs. City of Richmond, 39 Fed. Rep., 309.
National Bank vs. Kimball, 103 U. S. Rep., 732.
Virginia Coupon Cases, 114 U. S. Rep., 316.

Lenawee Co. Savings Bank vs. City of Adrian, 33 Northwestern Reporter, 304.
Osborne vs. Bank, 9 Wheaton, 739.
Howell vs. City of Tacoma, 3 Washington, 711.

It is, therefore, respectfully submitted that the judgment of the Supreme Court of the State of Washington should be reversed, and that that Court should be instructed to reverse the judgment of the Superior Court of Chehalis County, State of Washington, sustaining the demurrer of the defendants to the plaintiff's complaint.

EUGENE M. CARR,
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Counsel for Plaintiff in Error.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

IN THE SUPREME COURT

OF THE

UNITED STATES.

FIRST NATIONAL BANK OF ABERDEEN, WASHINGTON, *Plaintiff in Error*,

vs.

THE COUNTY OF CHEHALIS AND JAMES W. CARTER, Treasurer, *Defendants in Error.*

No. 38

BRIEF OF DEFENDANTS IN ERROR.

W. C. JONES,
Attorney General,
JAMES A. HAIGHT,
Assistant Attorney General,
FOR DEFENDANTS IN ERROR.

O. C. WHITE, - - STATE PRINTER.

Filed this ..... *day of* ....., *189*....

..... *Clerk.*

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OLYMPIA, WASH.:
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1896.

STATEMENT.

The complaint of plaintiff in error, being the plaintiff in the original cause, alleges in effect that 500 shares of the capital stock of plaintiff in error, being the whole number of its shares, was assessed April 1, 1891, *in solido* to plaintiff in error as owner thereof at $100 per share, and the tax levied accordingly. That at that time in said county of Chehalis there was moneyed capital owned by citizens being residents of said county and invested in loans and securities owing by citizens being residents of said county amounting to $237,400; that there was moneyed capital owned by residents of the rest of the state invested in loans and securities owing by citizens being residents of the rest of the state, amounting to $14,000,000; that this moneyed capital of the county of Chehalis and of the State of Washington was omitted from assessment by reason of the concerted action of the county assessors of the state pursuant to the advice of the attorney general; that the capitalization of national banks in the state then amounted to $7,000,000, and of incorporated state banks to $4,000,000; that the moneyed capital of the state invested in the stocks and bonds of insurance, gas and wharf companies amounted to a sum which added to all the moneyed capital before mentioned made $26,000,000.

Plaintiff in error further alleges that its capital, surplus and undivided profits were invested partly in United States bonds, and the remainder in loans to residents of the state and in furniture and fixtures.

It avers that the treasurer of Chehalis county is about to distrain its safes and time locks to secure said tax. It claims that the tax *in solido* is unlawful in method and that the omissions referred to effected a discrimination against the shares of plaintiff in error as a national bank forbidden by sections 5214 and 5219 U. S. R. S.

Without tendering or offering to pay the amount of tax plaintiff in error ought to pay, it prays for an injunction against the collection of the tax.

To this complaint defendant in error demurred.

The superior court of Chehalis county sustained the demurrer, and, plaintiff in error electing to stand on its demurrer, gave judgment for defendants in error.

Thereupon plaintiff in error appealed to the supreme court of the state, which affirmed the judgment of the court below. From this judgment of affirmance this writ of error is prosecuted.

The statutes pursuant to which the tax in question was levied are sections 21 and 23, ch. 140, Laws of Washington of 1891, pp. 289 and 290, and are as follows:

SEC. 21. Every individual, firm, corporation or association of persons, carrying on a general banking business in this state, whether the same has been organized under the banking laws of this state or the United States, or conducted under the style of private bankers, shall be assessed and taxed in the county, town, city

or village where such bank or banking association is located and not elsewhere, in the following manner: Annually at such times as provided for listing property for taxation, every such bank or banking association as contemplated in this section, shall, by its accounting officer, furnish the county or city assessor a statement verified by oath giving the amount of paid-up capital stock, the amount of surplus or reserve fund and the amount of undivided profits of such bank or banking association. The aggregate amount of capital, surplus, and undivided profits shall be assessed and taxed as other like property in the state is assessed and taxed: *Provided*, At the time of listing the capital stock, the amount and description of its legally authorized investments in real estate shall be assessed and taxed under this act, and the assessor shall deduct the amount of such investments in real estate from the aggregate amount of such capital, surplus and undivided profits and the remainder then taxed as above provided.

SEC. 23. Each bank and banking association shall be liable to pay any taxes assessed against them as the agent of each of its shareholders, owners or owner under the provisions of this act, and may pay the same out of their undivided profit account or charge the same to their expense account, or to the accounts of such shareholders, owners or owner in proportion to their ownership.

The opinion of the supreme court of Washington is found at 6 Wash. 64.

Plaintiff in error contends—

1. That the sections of the Washington revenue law of 1891 above quoted are invalid since they provide for the taxing of the capital and property of the bank instead of shares of its stock.

2. That the manner in which the assessment complained of was made constituted it an assessment on the capital and property of the bank and not on the shares of its stock.

3. That the failure to assess the shares of gas and in-

surance and wharf companies effected a discrimination against shares in national banks.

4. That the omission to assess the other moneyed capital alleged, resulted in the taxation of the shares of national banks at a greater rate than is assessed on other moneyed capital in the state.

5. That the action of the taxing officers complained of, violated the provisions of the federal constitution forbidding states to deprive any person of life, liberty or property without due process of law or to deny any person the equal protection of the laws.

ARGUMENT.

I.

THE VIOLATION OF THE FEDERAL CONSTITUTION.

(*a.*) This point cannot be raised in this court not having been raised in the court below. The "title, right, privilege or immunity" contended for by the plaintiff in error was not "claimed under the constitution of the United States," and the decision of the court was not against a "title, right, privilege or immunity" so claimed.

Spies v. Illinois, 123 U. S. 131, 181.
French v. Hopkins, 124 U. S. 524.
Clark v. Pennsylvania, 128 U. S. 395, 397.
Morrison v. Watson, 114 U. S. 111, 115.
Winona & St. Peter Land Co. v. Minnesota, 159 U. S. 540.

Even had the point been raised on a petition for rehearing, it would not be considered by this court.

Chappell v. Bradshaw, 128 U. S. 132, 134.
Texas Pacific R. Co. v. Southern Pacific R. Co., 137 U. S. 48, 53.
Caldwell v. Texas, 137 U. S. 692, 698.
Loeber v. Schroeder, 149 U. S. 580, 585.
Bushnell v. Crooke M. & S. Co., 148 U. S. 682, 689.
Miller v. Texas, 153 U. S. 535, 538.
Sayward v. Denny, 158 U. S. 180.

Being raised for the first time on the assignment of errors, it cannot be considered by this court.

Ansbro v. United States, 159 U. S. 695, 698.

(*b.*) The fourteenth amendment to the federal constitution does not undertake to control the mode of imposing a tax if notice and an opportunity for a hearing are afforded.

Walston v. Nevin, 128 U. S. 578, 582.

Palmer v. McMahon, 133 U. S. 660, 668.

Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 239.

Paulsen v. Portland, 149 U. S. 30, 41.

Pittsburgh, etc., R. Co. v. Backus, 154 U. S. 421, 427.

(*c.*) Nor does this amendment limit the taxing power of the state by imposing on it any rule of equality.

Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 237.

Chester v. Pennsylvania, 134 U. S. 240.

Home Ins. Co. v. New York, 134 U. S. 594, 606.

Pacific Express Co. v. Seibert, 142 U. S. 339, 351.

Charlotte, etc., R. Co. v. Gibbes, 142 U. S. 386, 394.

Jennings v. Coal Ridge, etc., Co., 147 U. S. 147.

Giozza v. Tiernan, 148 U. S. 657, 662.

II.

THE STATUTORY PROVISION FOR THE TAXATION OF THE CAPITAL STOCK OF NATIONAL BANKS.

(*a.*) Sections 5214 and 5219 forbid the taxation of the capital and permit only the taxation of shares of stock of national banks.

Van Allen v. The Assessors, 3 Wall. 573.

National Bank v. Commonwealth, 9 Wall. 353, 359.

(*b.*) Sections 21 and 23, ch. 140, Laws of 1891, above quoted, as construed by our supreme court provide for the taxation of the shares only of national banks.

Paul v. McGraw, 3 Wash. 296, 303, 307.

First National Bank v. County of Chehalis, 6 Wash. 64.

(*c.*) This construction by the state court will govern this court.

People v. Weaver, 100 U. S. 539.

Palmer v. McMahon, 133 U. S. 660, 665.

First National Bank v. Ayers, 160 U. S. 660, 664.

Stryker v. Goodnow, 123 U. S. 527.

Morley v. Lake Shore & M. S. R. Co., 146 U. S. 162.

(*d.*) No federal question arises where the validity of the state statute is admitted.

Commercial Bank v. Buckingham, 5 How. 317, 342.

Banking Co. v. Marshall, 12 How. 165, 167.

No federal question arises when the exemption from taxation claimed under the federal law is sustained.

Tyler v. Cass County, 142 U. S. 288.

There can be no federal question therefore in this case where the state court construes the statutes as not providing for the taxation of bank capital which the federal law exempts from taxation, and as providing for the taxation of bank shares which the federal law permits to be taxed. If this court would ever depart from its rule of following the construction given to the statute of a state by its court of last resort, it surely would not violate the rule in order to give the state statute a construction that would render it invalid.

Baltimore Traction Co. v. Baltimore Belt R. Co., 151 U. S. 137.

(*e.*) The assessment of the shares against the bank and the collection of the same therefrom seems to have been contemplated by the framers of the federal statutes and has been repeatedly upheld by this court.

National Bank v. Commonwealth, 9 Wall. 353.

Lionberger v. Rouse, 9 Wall. 468.

Van Slyke v. Wisconsin, *Bagnall v. same*, 154 U. S. 581.

Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 238.

(*f.*) The tax on the shares may be collected from the national bank by distraint.

First National Bank v. Douglas County, 3 Dillon 330, 334.

National Bank v. Morrison, 1 McCrary 204.

III.

THE LISTING IN SOLIDO BY THE ASSESSOR.

(*a.*) This listing being in compliance with the statutes and approved by the Supreme Court of Washington was valid.

(*b.*) The listing of the shares alleged in the complaint shows that the tax was imposed on the shares and not on the capital.

(*c.*) Sec. 23, above quoted, makes the bank the agent of the shareholders in paying the tax. This statutory agency of the bank can in no wise be affected by the listing of the shares in the name of the bank. Since the bank pays the whole tax as agent of the shareholders, the names of the shareholders are not necessary to the assessment or collection of the tax, and it is even held that for this reason the furnishing of a list of the shareholders by the cashier to the assessor cannot be compelled.

Paul v. McGraw, 3 Wash. 296.

(*d.*) The supreme court of the state having held the action of the assessor to be authorized by the statutes as above construed, there is no federal question.

Sage v. Louisiana Board of Equalization, 144 U. S. 647.

IV.

THE FAILURE TO ASSESS STOCKS OF NON-BANKING CORPORATIONS.

The discrimination forbidden by the federal statute is a discrimination as regards "other moneyed capital," not as regards other personal property, or shares of the capital stock of corporations not engaged in the banking business. The exemption of property not "moneyed capital" from taxation, or the taxation of such property at a lower rate than "moneyed capital" causes no "taxation at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state."

First National Bank v. Waters, 7 Fed. Rep. 152.
McMahon v. Palmer, 102 N. Y. 176.
People v. Commissioners, 4 Wall. 244.
Mercantile Bank v. New York, 121 U. S. 138.
Palmer v. McMahon, 133 U. S. 660, 667.
Talbot v. Silver Bow Co., 139 U. S. 438.

V.

THE OMISSION TO TAX PERSONAL CREDITS.

(*a.*) This omission is alleged in the complaint to have been made pursuant to an opinion of the attorney general

duly rendered, of which opinion the supreme court of Washington took judicial notice.

First National Bank v. Chehalis County, 6 Wash. 64, 70.

In this opinion the attorney general held that with the exception of credits of banks and bankers, brokers and stock jobbers, bonds, bank stocks and stocks other than bank stock, "credits" were exempt from taxation.

Opinions Attorney General, 1891, p. 59.

These exempted credits consisted mainly of accounts, promissory notes and mortgages.

First National Bank v. Chehalis County, 6 Wash. 64, 70.

It thus appears that the exempted credits consisted in part of "moneyed capital" and in part of other choses in action.

It also appears that while some "moneyed capital" was exempt, such moneyed capital as consisted of credits of banks and bankers, brokers and stock jobbers, of bonds, of corporate stocks, or of cash or bullion, were not exempt at all.

Secs. 3, 4, 16, 21, 22, 23, ch. 140, Laws of Wash. 1891, pp. 281, 282, 285, 289, 290.

(*b.*) This court has repeatedly held that the federal inhibition of taxation that discriminates against national banks has no application to general exemption laws founded on

just reason and not operating as an unfriendly discrimination against investments in national bank shares.

People v. The Commissioners, 4 Wall. 244.
Hepburn v. School Directors, 23 Wall. 480.
Adams v. Nashville, 95 U. S. 19.
Mercantile Bank v. New York, 121 U. S. 138, 161.
Bank of Redemption v. Boston, 125 U. S. 60, 68.

1. The exemption of credits in this case subserves the purpose of preventing double taxation.

Opinions Attorney General, 1891, p. 59.

Such a purpose is recognized by this court as a legitimate basis for an exemption law, though some moneyed capital is thereby rendered exempt.

Hepburn v. School Directors, 23 Wall. 480.

2. The exemption in question is not an unfriendly discrimination against national banks. The exemption is of certain classes of credits. Only a small fraction of the exempt credits was embraced in the term "moneyed capital;" only a small fraction of "moneyed capital" was comprised in the exempt credits. The consequence could not be, either in intent or effect, an unfriendly discrimination against national banks.

"Necessarily there may be other moneyed capital in the locality than such as is exempt. If there is, moneyed capital as such is not exempt. Some part of it only is. It could not have been the intention of congress to exempt

bank shares from taxation because some moneyed capital was exempt."

Hepburn v. School Directors, 23 Wall. 480, 485.

3. Under the revenue law of 1891, both the assets and shares of non-banking corporations in Washington are taxable.

Secs. 3, 20 and 21, ch. 140, Wash. Laws 1891, pp. 280, 289.

Sec. 16, *Id.* (item 23 in list).

The assets of national banks consisting largely of promissory notes are exempted from taxation by the federal law. The exemption in question gives to the residents and corporations of the state the benefit of a portion of the exemption enjoyed by national banks.

4. The exemption in question does not affect capital engaged in the banking business. State banks in Washington are assessed in the same manner as national banks.

Secs. 21, 23, ch. 140, Wash. Laws 1891, pp. 289, 290.

Private and foreign bankers are assessed in the full amount of the money used in their business.

Sec. 22, ch. 140, Wash. Laws 1891, p. 290.

Banks, bankers, brokers and stock jobbers are required to list for taxation all their credits.

Sec. 16, ch. 140, Wash. Laws 1891, p. 286 (item 21).

It is apparent, therefore, that the exemption in question does not, in the language of Justice MATTHEWS, in *Mercantile Bank v. New York*, 121 U. S. 138, 155, "create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character."

Bressler v. Wayne, 32 Neb. 834, 843.

5. The capital represented by shares in national banks is largely engaged in dealing in credits that are within the exemption in question. The capital employed in the business of dealing in exempt property should not itself be exempt. It is no discrimination, therefore, against shareholders of national banks to exempt, in addition to accounts, promissory notes and mortgages in buying and selling and holding which their capital is used.

6. The exemption in question besides diminishing double taxation, served to encourage thrift and savings. The exception of banks and bankers from this exemption is in harmony with this purpose, since the encouragement of thrift among the people in general does not require the extension of the exemption to banks and bankers, brokers and stock jobbers.

The exemption of savings bank deposits being an exemption of moneyed capital that does not compete with the business of national banks and being founded in reason,

causes no discrimination against shares in national banks though such savings in the state amount to $500,000,000 and upwards.

Mercantile Bank v. New York, 121 U. S. 138, 160.
Bank of Redemption v. Boston, 125 U. S. 60, 68.

(*c.*) The supreme court of Washington held that the complaint was too vague and indefinite to inform it whether any discrimination had been effected.

First National Bank v. Chehalis County, 6 Wash. 64, 70.

A similar complaint in another cause has been held to be equally insufficient.

Washington National Bank v. King County, 9 Wash. 607, 611.

The question of the sufficiency of pleadings to present a matter for determination is one of state law and involves no federal question.

Grand Rapids & I. R. Co. v. Butler, 159 U. S. 87, 91.
Moore v. Missouri, 159 U. S. 673, 678.
Caldwell v. Texas, 137 U. S. 692, 698.
Iowa Central Railway Co. v. Iowa, 160 U. S. 389, 393.
Leeper v. Texas, 139 U. S. 462, 468.

This being an independent ground of decision, not involving a federal question, and broad enough to support

the judgment of the state court, the writ should be dismissed.

Williams v. Weaver, 100 U. S. 547.

Rutland R. Co. v. Central Vermont R. Co., 159 U. S. 630, 640.

In any case the complaint fails to show that the moneyed capital exempted from taxation was of such character or was in such considerable quantity as regards the total moneyed capital of the state and such as was invested in shares of national banks as to affect any actual discrimination.

First National Bank v. Ayers, 160 U. S. 660, 667.

Dutton v. Bank, 53 Kan. 440, 461.

The exemption of an amount of moneyed capital large in itself but small relatively to the whole amount of moneyed capital cannot be deemed an unfair discrimination.

Mercantile Bank v. New York, 121 U. S. 138, 161.

The complaint further fails to show whether the moneyed capital alleged to have been exempted was in the hands of individual citizens of the state. The exemption of moneyed capital in the hands of corporations is no discrimination against shares in national banks.

Mercantile Bank v. New York, 121 U. S. 138, 156.

Bank of Redemption v. Boston, 125 U. S. 60, 68.

Defendants in error therefore believe that they may fairly ask this court to hold —

1. That the decision of the Washington supreme court

that the complaint was too vague and indefinite to allege sufficiently a discrimination against the shares of the plaintiff in error involved no federal question and was broad enough to support its judgment, and hence that the writ of error should be dismissed.

2. That the complaint does not sufficiently allege a discrimination against the shares of the plaintiff in error in the matter of taxation.

3. That the statutes of Washington as construed by its supreme court provide for the taxation of the shares and not the capital of national banks, and that the collection of the tax from the banks is valid.

4. That the assessment in this case was of the shares and not of the capital of the plaintiff in error.

5. That the exemption of the credits specified neither contemplated nor effected a discrimination against shares of national banks.

6. That the federal constitution has not been violated by the taxing officers of the state, and no right claimed thereunder has been denied by the Washington courts.

Respectfully submitted.

W. C. JONES,
Attorney General,

JAMES A. HAIGHT,
Ass't Attorney General,

FOR DEFENDANTS IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1895.

THE FIRST NATIONAL BANK OF ABERDEEN,
Plaintiff in Error,
vs.
THE COUNTY OF CHEHALIS AND J. M. CARTER AS TREASURER,
Defendants in Error.

No. ~~200.~~ 38.

ADDITIONAL AUTHORITIES FOR DEFENDANTS IN ERROR.

UNDER POINT II (b.)

An instance where words in a statute stating that *capital stock* is to be assesed are assumed to provide a tax on *shares* is found in

Newark Banking Co. *v.* Newark, 121 U. S., 163, at page 164.

UNDER POINT II (*c.*)

In National Bank *v.* Commonwealth, 9 Wall., 353, the statutory tax of 50 cents per share was imposed in a lump sum of $4,000 on the bank, the statute nowhere providing

for the reimbursement of the bank by the shareholders in any manner whatever.

The bank contended that the tax was practically a tax on itself and not on its shareholders. (9 Wall., 353, 361.)

But this court held that the tax was practically a tax on the shares and the shareholders, and not on the bank or its capital.

In Waite *v.* Dowley, 94 U. S., 527, this court held that this assessment of the tax against the bank was an illustration of the general rule of Section 5219 U. S. Revised Statutes, remitting the *method* of taxing bank shares to the States, which rule empowered the States to require bank cashiers to furnish to the tax officers of the State certificates containing information useful or necessary in order to ascertain the value of the shares and the residence of their owners.

So true is it that the payment by the bank of taxes on its shares is a payment of the shareholders' money that it was the duty of the bank to include the amount of such payments in the statement of its earnings on which, under the Act of June 30, 1864, an internal revenue tax was required to be paid.

> Central National Bank *v.* United States, 137 U. S., 355, 363.

Plaintiff in error at page 5 of its brief, mistakenly cites City of Boston *v.* Beal, 51 Fed. Rep. 306, as supporting the doctrine that when the bank charges the tax paid to its expense account, the tax falls not on the shareholder but on the bank; but an examination of that case shows that the payment of the tax by the bank is practically a payment by its shareholders except when by reason of the insolvency of the bank, the payment by the bank causes the tax ultimately to fall on its creditors.

In this case no insolvency of the plaintiff in error is alleged. This court does not try moot cases whether the questions involved relate to the taxation of national banks or otherwise.

Waite *v.* Dowley, 94 U. S., 527, 534.

Plaintiff in error at page 6 of its brief accuses the Supreme Court of Washington of confounding the method of collection with the power to assess. It will be observed that if that court is guilty as charged it is so in company with this court when it decided National Bank *v.* Commonwealth, 9 Wall., 353, where the statute, the tax under which was upheld, provides only for assessment of the tax against and payment by the bank and ignores the shareholders altogether.

UNDER POINT III.

The taxation of the capital of a corporation where its value is ascertained by multiplying the number of shares by the market value of each share is practically equivalent to the taxation of shares at their market value, where no deductions for indebtedness are allowed.

Mercantile Bank *v.* New York, 121 U. S., 138, 164.

The cases cited by plaintiff in error (on page 7 of its brief), as holding assessments *in solido* invalid are cases in all of which the capital and not the shares were assessed. Also in all these cases except Collins *v.* Chicago, 4 Bissell, 472, it appears that the State law permitted deductions on account of indebtedness, of the benefit of which deductions, the shareholders were deprived by such assessment. Furthermore, in First National Bank of Leoti *v.* Fisher, 45 Kan., 726, and Miller *v.* First National Bank, 46 Ohio St. 424, it appears that the State statute expressly re-

quires the listing of the shares in the name of the shareholder.

Since in this case the assessment was of the *shares* and not of the *capital*, since the revenue law of Washington for 1891, allowed no deductions for indebtedness for purposes of assessment or taxation, and since the same law did not require the assessment of the shares in the names of the shareholders, the cases cited have no bearing on the case at bar.

Plaintiff in error at page 8 of its brief mistakenly says, that in National Bank *v.* Commomwealth, 9 Wall., 353, the assessment had been made against the stockholders. On the contrary the assessment was a statutary tax of 50 cents per share, assessed against the bank in one sum of $4000, and the shareholders were not referred to or considered, either in the tax proceedings or in the Kentucky Statutes providing for the tax.

Plaintiff in error further contends that the doctrine of National Bank *v.* Commomwealth, 9 Wall., 353, applies only when suit (in the nature of garnishment) is brought against the bank for the tax and not when the collection of the tax is sought to be enforced by distress, and that Hershire *v.* First National Bank, 35 Iowa, 272 points out the distinction. On the contrary Bank *v.* Commomwealth approves the collection of the tax from the bank as a method of collecting from the shareholder, however that collection against the bank may be enforced. It nowhere sets limits by even the remotest implication to the mode of collecting from the bank.

Furthermore, Hershire *v.* First National Bank was itself an action against a bank for a tax, and the court held that under the Iowa Statute compelling the bank to pay as agent of the stockholders, and the statute requiring an agent to pay taxes for his principal only when

he has funds of the principal under his control, in an action to recover the tax from the bank the complaint must allege the existence under the control of the bank of funds of its stockholders.

By a parity of reasoning in this case the plaintiff in error should have alleged in its complaint that it had no funds of stockholders under its control such as surplus, undivided profits or dividends.

UNDER POINT V, (b), 4.

Compare Van Allen *v.* Assessors, 3 Wall., 573, with People *v.* Commissioners, 4 Wall., 244.

UNDER POINT V (c.)

Plaintiff in error complains at page 10 of its brief that the average assessment of shares of national banks stock was $85 while that of State banks stock was $56 per share. No showing is made as to the relative average value of the respective shares.

Furthermore, there is no allegation that the difference in the assessment, if prejudicial, was due to any unfair provision of law or rule of assessment. Such an averment is necessary to render the complaint good on demurrer.

National Bank *v.* Kimball, 103 U. S., 732, 735.

Plaintiff in error argues at page 10 of its brief that the exemption of credits alleged, subjects its shares to a tax that is *excessive* whether void or not.

For any erroneous or excessive taxation it had ample and complete remedy by making application to the county board of equalization, which it did not do.

See 68 Ch., 140, Wash. Laws 1891, p. 304.

Stanley *v.* Supervisories of Albany, 125 U. S., 535, 551.

If the excessive tax was so imposed as to enable a court of equity to interfere, plaintiff should have paid or tendered the tax rightfully due.

State Railroad Cases, 92 U. S., 575, 6, 6.
Cummings *v.* National Bank, 101 U. S., 153.
National Bank *v.* Kimball, 103 U. S., 732.
Albuquerque Bank *v.* Perea, 147 U. S., 87, 90.

This rule prevails in Washington.

Andrews *v.* King County, 1 Wash., 46, 54.

A State statute forbidding deduction from bank shares that are allowed generally from credits is not *void*, it is simply inoperative as to persons entitled to deductions.

Supervisors *v.* Stanley, 105 U. S., 305.

By a parity of reasoning the tax is not void if a discrimination exists, it is inoperative to the extent of the excess caused by the discrimination and the remainder should be paid or tendered.

Respectfully submitted,

JAMES A. HAIGHT,
Assistant Attorney General.

166-463

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 223.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, PLAINTIFF IN ERROR,

vs.

THE CITY OF SEATTLE AND JOHN M. E. ATKINSON, AS TREASURER AND EX OFFICIO TAX-COLLECTOR OF SAID CITY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED FEBRUARY 14, 1895.

(15,789.)

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a In the Supreme Court of the State of Washington.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff in Error,
vs.
THE CITY OF SEATTLE and J. M. E. ATKINSON, as Treasurer and *ex Officio* Tax-collector of said City (Successor in Office of and Substituted in this Action for Adolph Krug), Defendants in Error. } #1286.

Appeal from the supreme court of the State of Washington.

b No. 1286.

Filed Apr. 3, 1894.

C. S. REINHART, *Clerk*,
By R. B. CRANDALL, *Deputy*.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff and Appellant,
v.
THE CITY OF SEATTLE *et als.*, Defendants and Respondents. } No. 13085.

Appeal from the superior court of King county to the supreme court of the State of Washington.

1 In the Superior Court for the County of King, State of Washington.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff,
v.
THE CITY OF SEATTLE, a Municipal Corporation, and Adolph Krug, as Treasurer and *ex Officio* Tax-collector of the said City of Seattle, Defendants. } No. 13085. Complaint.

To the judges of the above-entitled court:

The plaintiff above named, by its counsel, complains of the defendants above named and each of them, and for cause of action alleges:

I.

That at all times hereinafter referred to the plaintiff was a corporation created and doing a banking business as a national bank under the national banking laws of the United States of America and located at the city of Seattle, in the county of King, State of Washington.

II.

That at all the times hereinafter referred to the defendant The City of Seattle was a municipal corporation created by special

charter under the general laws of the State of Washington, located in the county of King, in the State of Washington.

III.

That the defendant Adolph Krug is the duly elected and qualified treasurer of the city of Seattle aforesaid and *ex officio* collector of delinquent taxes in and for said city.

2

IV.

That the stock of the plaintiff consists of 1,000 shares of $100.00 each; that all of the same is fully subscribed and paid up and is owned in part by citizens of the State of Washington, resident in the State of Washington, and in part by citizens of the United States residing outside of the State of Washington.

V.

That on and prior to the first day of April, 1891, one C. W. Ferris was the duly elected and qualified comptroller and *ex officio* city assessor of the said city of Seattle, and by virtue of his office was charged by the provisions of subdivision 1 of section 15 and section 16 of article 9 of the charter of the city of Seattle, adopted on the 14th day of October, 1890, and by the provisions of the act of the legislature of the State of Washington approved March 9, 1891, and entitled "An act to provide for the assessment and collection of taxes in the State of Washington and declaring an emergency," which said act went into effect on the day of its approval, with the duty of preparing an assessment-roll of all property subject to taxation in the said city of Seattle, as owned and there subject to taxation on the first day of April, 1891.

VI.

That the said assessor thereupon proceeded to make out an assessment-roll for said city, wherein, *inter alia*, he did list to the plaintiff as owner thereof 2,511 shares of plaintiff's capital stock, valuing the same for the purposes of assessment and taxation thereunder at the rate of $100.00 per share, and did list the same *in solido* to plaintiff as owner thereof at a total valuation of $251,100.00.

3

VII.

That between the first day of April, 1891, and the first day of July, 1891, as required by said charter and statute, the said assessor did present the said assessment-roll to the city clerk of the city of Seattle.

VIII.

That thereafter, in the month of September, 1891, the city council of said city, being charged by said section 14 of article 9 of said charter with the duty so to do, did, by ordinance, fix the rate of tax to be levied, and did levy a tax upon the several properties

listed in said assessment-roll to the respective owners thereof as so listed, including plaintiff, at the rate of 4 and $\frac{1}{2}$ mills on each dollar of valuation as fixed in said roll as equalized, said levy being for municipal purposes.

IX.

That thereafter, in the month of September, 1891, the comptroller of said city, having extended said tax levy upon said assessment-roll, did deliver the said assessment-roll to the treasurer of said city.

XI.

That thereafter, the said tax so as aforesaid assessed to plaintiff not having been paid in whole or in part, the city treasurer of said city did, on the first day of March, 1892, declare the same delinquent, and did thereupon add thereto a penalty in a sum equal to five per cent. thereof, to wit, the sum of $56 & $\frac{42}{100}$; and on the first Monday in April, A. D. 1892, the defendant Adolph Krug, as such city treasurer, did deliver to the comptroller of said city
4 a complete delinquent list of all persons and property then owing taxes, including therein this plaintiff and the property so as aforesaid assessed to it, and within three days thereafter the said city comptroller did return said delinquent list to the defendant Adolph Krug, as such city treasurer, who is now most wrongfully proceeding to collect the said tax of and from the plaintiff in the sum total of $1,186.44, exclusive of interest and costs, and threatens to collect the same and the whole thereof of and from the plaintiff by distraining sufficient property, goods, and chattels of the plaintiff wherewith to make the same, and, unless restrained by order of this court, will, most wrongfully and unlawfully, by force of his official power, collect the said tax and the whole thereof from the plaintiff by levying upon its goods and chattels, and thereby seriously injuring plaintiff's business and interfering with the banking business of plaintiff, to the great detriment of plaintiff, its stockholders and depositors, and thereby violating and setting at naught the provisions of the Revised Statutes of the United States, under which plaintiff was created and has its corporate existence, and from whence plaintiff derives its power to conduct business as a national bank.

XII.

That said assessment is an assessment *in solido* directly to the plaintiff, and said tax is levied upon and directly against the plaintiff, and because so assessed and levied is in direct contravention and violation of and is forbidden by the provisions of sections 5214 and 5219 of the Revised Statutes of the United States and generally of the banking acts and laws of the United States.
5 That by the provisions of the said charter and of the act of the legislature of the State of Washington, hereinbefore by its title referred to, the shares of stock held by the shareholders of the plaintiff are not taxable, but are exempted from taxation.

XIII.

That on the 1st day of April, 1891, there existed in the said city of Seattle, State of Washington, taxable moneyed capital (other than and beyond that invested in shares of stock of national banks and beyond that invested in incorporated banks) owned by individual citizens of said State resident in said city and there invested in interest-bearing loans *loans* and securities to them payable and owing by other citizens of said State residing in said city, of vast amount, to wit, exceeding the sum of six million dollars.

XIV.

That on the said first day of April the total capitalization of national banks located in the said city of Seattle was the sum of one and one-half millions of dollars; that the total capitalization of banks there located, but incorporated under the laws of the State of Washington, was the sum of eight hundred thousand dollars, and that at the same time large amounts of moneyed capital were invested in the city of Seattle by residents of said city in the stocks and bonds of insurance, wharf, and gas companies, and in addition to the foregoing there then existed in said city other moneyed capital amounting to at least six million dollars, being the other moneyed capital hereinbefore referred to; that in no case, as plaintiff is informed and believes, is the stock of any national
6 bank or of shares of stock of any national bank located in the city of Seattle valued for assessment at a less sum or assessed upon a valuation of less than the par value thereof; and, further, that the total assessment and total valuation in the assessment made by the city of Seattle throughout the said city of Seattle for the year 1891 of and upon the capital stock, bonds, and shares of banks, banking corporations, insurance, gas, and wharf corporations was the sum of $2,284,080.00, of which the sum of $1,766,000.00 was upon and of the stock of national banks in said city of Seattle located.

XV.

That the facts alleged in the preceding paragraphs hereof numbered XIII and XIV were then and during all of the times intervening between the first day of April, 1891, and the time of the return of the said assessment-roll by the city assessor to the city clerk well known to the said assessor, and during all of said times and until the 5th day of April, 1892, were well known to the several city officers hereinbefore referred to, and since the first day of March, 1892, have been and now are well known to the defendant, the treasurer of said city.

XVI.

That on the said first day of April, 1891, the entire capital, surplus, and undivided profits of plaintiff were invested as follows, to wit, $25,000.00 in bonds of the United States and the remainder in loans to residents of the State of Washington.

XVII.

That all of said other moneyed capital referred to in the foregoing paragraph hereof numbered XIII, the same being all the moneyed capital in the city owned by resident individual citizens and
7 invested, as aforesaid, in interest-bearing loans, discounts, and securities, except that owned by and invested in incorporated banks located in the city, was purposely omitted from assessment and from taxation whatever by said city assessor and other taxing officers of the defendant city, and the same and the whole thereof have escaped taxation.

XVIII.

That the omission by the said city assessor and taxing officers of the said defendant city to either assess or tax said other moneyed capital last above referred to was made through, under, and by reason and in pursuance of an agreement entered into in the year 1891, prior to the first day of April of said year, between the several county assessors of the several counties in the said State of Washington whereby it was agreed upon between them that such omission should be made by them and all of them, and said omission and said agreement to omit was in pursuance of an opinion rendered by the attorney general of the State of Washington to the several county assessors at their request advising such omission, the said attorney general being, by virtue of his office, required by the laws of the State of Washington to render such opinion to said assessors upon request, which said agreement was adopted by the said city assessor and the defendant city.

XIX.

That such omission necessarily operated as a discrimination in favor of other moneyed capital in the hands of individual citizens of said State resident and taxable in said city and against shares of stock of national banking associations located within said city, including plaintiff, and necessarily resulted in the taxation of the shares of such national banks, including plaintiff, at a greater
8 rate than other moneyed capital in the hands of the individual citizens of said State resident and taxable in said city, all of which was well known to and most wrongfully intended by said city assessors and said several taxing officers of the defendant city and to and by the defendant city, and all of which is in direct violation of and forbidden by the provisions of the Revised Statutes hereinabove specifically referred to.

XX.

That for the several reasons aforesaid the said tax assessed to the plaintiff is inequitable, illegal, and void, whether the same be an assessment *in solido* to plaintiff or an assessment upon its shares of stock to the individual owners thereof, and the aforesaid attempted and threatened proceeding to collect the same from the plaintiff on

the part of the defendant, the said city treasurer, is unjust and oppressive and should be restrained.

XXI.

To the end that the plaintiff may obtain the relief to which it is justly entitled in the premises, plaintiff prays that upon the hearing and determination of the matters herein involved it may be decreed by this court that the said assessment to plaintiff is illegal and said tax upon the plaintiff particularly described and referred to in its foregoing complaint is void, and, further, that by order of this court a permanent injunction may issue restraining and enjoining the defendants and each of them from further in any way proceeding in the collection of said tax. Plaintiff further prays that pending the final hearing of this cause upon its merits a temporary injunction be issued by the court, restraining the collection of the tax to plaintiff hereinabove referred to and described or any part thereof during the time which shall intervene between the filing of this complaint and the final decree in this action, and that pending the foregoing application for a temporary injunction the defendant *me* be so restrained by order of this court, and that a day be set by the court for the hearing of said application for a temporary injunction.

9

Plaintiff prays further that it have such other relief as it is in equity entitled to receive and recover its costs and disbursements in this action of and from the defendants.

PRESTON, CARR & PRESTON AND
JAMES B. HOWE,
Attorneys for Plaintiff.

STATE OF WASHINGTON, }
County of King, } *ss:*

R. R. Spencer, being first duly sworn, on oath says that he is cashier of the plaintiff in the above-entitled action; that he has heard the foregoing complaint read, knows the contents thereof, and believes the same to be true.

R. R. SPENCER.

Subscribed and sworn to before me this 8th day of April, 1892.

J. T. DE BOLT,
Notary Public, Residing at Seattle, Washington.

(Endorsed:) Filed Apr. 8, 1892. W. B. Spencer, clerk, by Geo. F. Stanley, deputy.

10 In the Superior Court of King County, State of Washington.

NATIONAL BANK OF COMMERCE, Plaintiff,
vs.
THE CITY OF SEATTLE *et al.*, Defendants.

No. 13085. Amended Answer.

Come now the defendants, by George Donworth, their attorney, and make this their amended answer to the complaint herein as follows:

I.

These defendants deny each and every allegation contained in the sixth paragraph of said complaint; but defendants admit that twenty-five hundred and eleven shares of plaintiff's capital stock were assessed in the name of the plaintiff, valuing the same for the purposes of assessment and taxation thereunder, at the rate of one hundred dollars per share, at a total valuation of two hundred and fifty-one thousand and one hundred dollars.

II.

Answering the allegations contained in the tenth paragraph of said complaint, these defendants deny that said defendant, Krug, is wrongfully proceeding to collect said taxes, and deny that said Krug will wrongfully or unlawfully collect said tax; and these defendants deny that the acts, doings, and proceedings of these defendants for the enforcement and collection of said tax will in any manner or way injure plaintiff's business or interfere with the banking business of plaintiff or will interfere with said business to the detriment of plaintiff or of plaintiff's stockholders or depositors, and deny that thereby these defendants violate or set at naught the provisions of the Revised Statutes of the United States; deny that in any respect the acts, doings, and proceedings done or
11 intended by these defendants are in any was wrongful, unlawful, or detrimental to the business of the plaintiff or in any way injurious to any person.

III.

These defendants deny each and every allegation contained in the eleventh paragraph of said complaint, except that defendants admit that said tax is levied in the name of the plaintiff, to be paid by the plaintiff as the agent of each of its stockholders.

IV.

These defendants deny each and every allegation contained in the twelfth paragraph of said complaint.

V.

These defendants deny each and every allegation contained in the thirteenth paragraph of said complaint; deny that there was on

the first day of April, 1891, or at any time since said day, any taxable moneyed capital (other than and beyond that invested in shares of stock of national banks and beyond that invested in incorporated banks) of any amount whatever other than as contained in the assessment-roll and tax-list for said year.

VI.

These defendants deny each and every allegation contained in the fourteenth paragraph of said complaint, except that these defendants admit that on the said first day of April, 1891, the total capitalization of national banks located in said city of Seattle was the sum of one and one-half millions of dollars, and that in no case is the stock of any national bank or shares of any national bank located in said city valued for assessment at a less sum or assessed upon a valuation of less than the par value thereof. These
12 defendants deny that there was at said time any taxable moneyed capital whatever in said city other than as duly listed, valued, and assessed at the actual cash value in the assessment and tax rolls of the city for said year.

VII.

These defendants deny each and every allegation contained in the fifteenth paragraph of said complaint, except that these defendants admit that the several city officers mentioned in said complaint had knowledge during said times of the facts admitted in the sixth paragraph of this answer.

VIII.

These defendants deny any knowledge or information sufficient to form a belief as to each and every allegation contained in the sixteenth paragraph of said complaint.

IX.

These defendants deny each and every allegation contained in the seventeenth paragraph of said complaint.

X.

These defendants deny each and every allegation contained in the eighteenth paragraph of said complaint.

XI.

These defendants deny each and every allegation contained in the nineteenth paragraph of said complaint.

XII.

These defendants deny each and every allegation contained in the twentieth paragraph of said complaint.

And for a further, separate, and affirmative defense the defendants allege as follows:

That on, to wit, the 15th day of May, 1891, the plaintiff
13 on demand of the city assessor of said defendant city, which demand was made for the purpose of listing and assessing its shares of stocks in the tax-list and assessment-roll of said year, did furnish to said assessor a list of the names and residences of the stockholders owning its stock on the first day of April, 1891, and in and by said list it informed said assessor and said defendant city that twenty-five hundred and eleven shares of its capital stock were owned on said day by ninety-nine stockholders whose names and residences were given to said assessor in said written list; that the said shares of stock were duly listed in the assessment-roll of defendant city for said year by its assessor, and were assessed in the name of the plaintiff, and the name and residence of each of said stockholders was entered in said assessment-roll as a part of said assessment, and said plaintiff is and was required to pay the tax assessed thereon as the agent of each of its stockholders, and which taxes were duly, legally, and properly assessed and rated in said assessment-roll, and each and all of the acts and doings of said city and its officers in the premises were and have been duly done and performed in accordance with the law and the charter of said city, and said taxes alleged in the complaint are now due and delinquent; that said assessment-roll and tax-list is now on file, duly completed and certified, in the office of the city treasurer and is in due form of law.

Wherefore the defendants pray that they be hence dismissed and recover of the plaintiff their costs and disbursements herein.

GEORGE DONWORTH,
Attorney for Defendants.

14 STATE OF WASHINGTON, } ss.
County of King, }

J. T. Ronald, being first duly sworn, on oath says that he is mayor of The City of Seattle, defendant in the above-entitled action; that he has heard the foregoing amended answer read, knows the contents thereof, and believes the same to be true; that he makes this affidavit because said city is a municipal corporation and affiant is its mayor.

J. T. RONALD.

Subscribed and sworn to before me this 19 day of Nov., A. D. 1892.

GEORGE DONWORTH,
Notary Public in and for the State of Washington,
Residing at Seattle.

(Endorsed:) Filed Nov. 21, 1892. W. B. Spencer, clerk, by H. H. Philips, deputy. Service of the within paper on the undersigned this 19 day of Nov., 1892, is hereby admitted. Preston, Carr & Preston, attorney- for pl'ff.

15 In the Superior Court of King County, State of Washington.

NATIONAL BANK OF COMMERCE, Plaintiff,
vs.
THE CITY OF SEATTLE *et al.*, Defendants. } No. 13085. Reply to Amended Answer.

Comes now the plaintiff and for reply to the further, separate, and affirmative defense pleaded in the amended answer of the defendant—

I.

Admits that in the year 1891 the plaintiff, on the demand of the city assessor of the defendant city, did furnish to said assessor a list containing among other names the names and residences of the stockholders of the plaintiff owning its stock on the 1st day of April, 1891.

It denies each and every allegation made or contained in said separate, further, and affirmative defense except such thereof as it has hereinabove expressly admitted.

Wherefore the plaintiff prays as in its complaint.

PRESTON, CARR & PRESTON,
JAMES B. HOWE,
Attorneys for Plaintiff.

16 STATE OF WASHINGTON, } *ss:*
County of King, }

R. R. Spencer, being first duly sworn, on oath says that he is the cashier of the plaintiff corporation in the above-entitled action; that he has heard the foregoing reply read, knows the contents thereof, and believes the same to be true; that he makes this affidavit for and in behalf of the said corporation as such officer thereof.

R. R. SPENCER.

Subscribed and sworn to before me this 1 day of June, 1893.

G. HAVERS,
Notary Public, Residing at Seattle, Washington.

Received copy of the within reply and service of same admitted this 2nd day of June, 1893.

GEORGE DONWORTH,
Attorney for Def't.

(Endorsed:) Filed Jun- 3, 1893. T. W. Gordon, clerk, by H. H. Smith, deputy.

17 In the Superior Court of the State of Washington for the County of King.

NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff,
vs.
THE CITY OF SEATTLE and ADOLPH KRUG, Treasurer and *ex Officio* Tax-collector of said City, Defendants.
No. 13085. Decree.

THURSDAY, *June* 15, 1893.

This cause coming on regularly for trial this day before the Honorable J. W. Langley, one of the judges of the above-entitled court, the plaintiff appearing by Harold Preston and E. M. Carr, its attorneys, and the defendants appearing by George Donworth, corporation counsel of the defendant city, the defendant, by its counsel, objects to the complaint and to the reception of any evidence in support thereof on the ground that the said complaint does not state facts sufficient to constitute a cause of action against the defendants or either of them, and, the court having heard argument thereon, the said objection is by the court sustained, the plaintiff preserving its exception to the order of the court sustaining such objection; which exception is by the court allowed.

And now, the plaintiff electing to stand upon its complaint, it is, upon motion of defendant, by the court ordered and adjudged that the action be, and the same is hereby, dismissed; and it is hereby adjudged and decreed that because of said insufficiency of the plaintiff's complaint the defendants and each of them do have and recover of and from the plaintiff the costs of this action, to be taxed.

Done this 12th day of June, 1893.

J. W. LANGLEY, *Judge.*

18 To the foregoing order of the court dismissing the action and to the foregoing decree of the court for costs to the defendant the plaintiff at the times preserves due exception and its exception is by the court allowed.

J. W. LANGLEY, *Judge.*

19 In the Superior Court of the State of Washington for the County of King.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff,
vs.
THE CITY OF SEATTLE and ADOLPH KRUG, Treasurer and *ex Officio* Tax-collector of said City, Defendants.
No. 13085. Journal Entry.

THURSDAY, *June* 15, 1893.

Now, at the time judgment is rendered in the above-entitled cause, the plaintiff, by its attorney, in open court gives notice that it appeals to the supreme court of the State of Washington from the

judgment heretofore rendered in this action on this day by the above-entitled court dismissing the action, and for costs to the defendants, and from the whole of said judgment.

Whereupon, the said notice of appeal having, as aforesaid, been duly given in open court on this day, at the time of the rendition of said judgment, it is by the court ordered that the clerk of the court do make entry of such notice of appeal in the journal of the court.

Done this 12th day of June, A. D. 1893.

J. W. LANGLEY, *Judge.*

20 In the Superior Court of the State of Washington for the County of King.

THE NATIONAL BANK OF COMMERCE, SEATTLE, Plaintiff, *vs.* THE CITY OF SEATTLE and ADOLPH KRUG, Treasurer and *ex Officio* Tax-collector of said City, Defendants.	No. 13085. Appeal and Stay Bond.

Know all men by these presents that we, The National Bank of Commerce of Seattle, the plaintiff above named, as principal, and M. D. Ballard and Thos. W. Prosch, as sureties, are held and firmly bound unto the above-named defendants and each of them in the full sum of twenty-five hundred dollars ($2,500.00); payment of which, well and truly to be made, to the above-named defendants we and each of us bind ourselves, and we, the said sureties, do bind our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12 day of June, A. D. 1893.

The condition of the foregoing obligation is such that whereas the above-named principal has taken an appeal to the supreme court of the State of Washington from the judgment of the above-entitled court in the above-entitled action, dismissing the action and for costs to the defendants;

And whereas at the time of the rendition of said judgment a temporary injunction was in force by order of the court restraining the defendants and each of them from proceeding to collect the tax described in the plaintiff's complaint or any part thereof from the plaintiff:

Now, if the said plaintiff shall well and truly pay all costs
21 and shall save the above-named defendants harmless from all damages by reason of the appeal, and shall pay all costs and damages that may be awarded against it, the plaintiff above named, on such appeal or on the dismissal thereof, and if the said plaintiff, the appellant, shall satisfy and perform the judgment appealed from in case it shall be affirmed, and any judgment or order which the said supreme court or any appellate court may render or make or order to be rendered or made by said superior court, and if the said plaintiff, appellant, shall pay to the said defendants all

costs and damages that may be adjudged against the said plaintiff, appellant, on the said appeal, and all costs and damages that may accrue to the said defendants by reason of such injunction remaining in force, then this obligation shall be void; otherwise to remain in full force and effect.

THE NATIONAL BANK OF COMMERCE,
By R. R. SPENCER, *Its Cashier.*
M. D. BALLARD. [SEAL.]
THOS. W. PROSCH. [SEAL.]

[Corp. Seal N. B. Commerce.]

Signed, sealed, and delivered in presence of—
G. HAVERS.
J. S. McLELLAN.

22 STATE OF WASHINGTON, } ss:
County of King, }

M. D. Ballard and Thos. W. Prosch, the sureties on the above and foregoing bond, being first duly sworn, each for himself on his oath deposes and says: I am one of the sureties named in the above and foregoing bond. I am not an attorney or counsellor at law, sheriff, clerk, or other officer of any court of record, and am worth the sum of twenty-five hundred dollars over and above all my just debts and liabilities in property within the State of Washington and exclusive of property exempt from execution. I am a resident of the State of Washington.

M. D. BALLARD.
THOS. W. PROSCH.

Sworn to before me and subscribed in my presence this 12 day of June, A. D. 1893.

G. HAVERS,
Notary Public in and for the State of Washington,
Residing at the City of Seattle, said State.

[NOTARIAL SEAL.]

(Endorsed:) Filed Jun- 15, 1893. T. W. Gordon, clerk; H. H. Smith, deputy.

23 In the Superior Court for the County of King, State of Washington.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff,
vs.
THE CITY OF SEATTLE and ADOLPH KRUG, Treasurer and *ex Officio* Tax-collector of said City, Defendants.

No. 13085. Statement of Facts.

Be it remembered that on this 12th day of June, 1893, the above-entitled cause came on regularly to be heard before the Honorable

J. W. Langley, one of the judges of the above-entitled court, the plaintiff appearing by Harold Preston and E. M. Carr, its attorneys, and the defendants appearing by George Donworth, corporation counsel of the defendant city, and the following proceedings were had:

The plaintiff called as a witness Frank Paul, who was duly sworn. The plaintiff then proceeded to interrogate the said witness as to the matters alleged in its complaint.

Thereupon the defendants objected to any testimony whatever being given in the case for the reason that the complaint of the plaintiff did not state facts sufficient to constitute a cause of action, and the court, having heard argument upon said objection, the same was sustained. To the order of the court sustaining the same the plaintiff at the time preserved due exception and its exception was allowed by the court.

Thereupon the plaintiff, by its attorneys, offered proof to establish all and singular the allegations of its complaint.

The defendants, by their attorneys, objected to the recep-
24 tion of the evidence or any thereof upon the ground that the complaint did not state facts sufficient to constitute a cause of action, and, after argument, the objection of the defendants was sustained and the testimony ruled out; to which order of the court the plaintiff took due exception, which was by the court allowed.

Thereupon the plaintiff announced its election to stand upon its complaint, and the court, upon the motion of the defendants, dismissed the action, rendering judgment in favor of the defendants against the plaintiff for the costs thereof; to which judgment of the court the plaintiff at the time preserved due exception.

No other, further, or different proceedings were had, and the foregoing constitutes an entire record of all the proceedings in the action, aside from those proceedings by way of pleadings and in the matter of granting restraining order and temporary injunction, which matters have been previously made of record in the action.

I, J. W. Langley, do hereby certify that the above-entitled cause was tried before me as above recited and judgment rendered therein by me as above recited, and that the matters and proceedings embodied in the foregoing statement are matters and proceedings in the said cause, and the same are hereby made a part of the record therein, and the said statement contains all the material facts, matters, and proceedings heretofore occurring in the cause and not already a part of the record therein.

25 In witness whereof I have hereunto set my hand, at the county of King, State of Washington, this 12th day of June, A. D. 1893.

J. W. LANGLEY, *Judge.*

The defendants in the above-entitled cause, by their attorney, hereby acknowledge, this 12th day of June, 1893, to have been duly served by the plaintiff with a copy of the foregoing statement of facts.

We hereby agree that said statement of facts is correct in all respects, and hereby notify the plaintiff that we will not propose any amendments thereto.

GEORGE DONWORTH,
Attorney for the Defendants.

It is hereby stipulated between the plaintiff and the defendants, by their respective counsel, that application may be made to the judge of the court before whom the above-entitled cause was tried, to wit, the Honorable J. W. Langley, at his court-room, in the city of Seattle, on the 12th day of June, 1893, to settle and certify the foregoing statement of facts, and that at such time and place the judge may settle and certify the same, and that neither party will ever object or take exception to the statement in any respect because of its having been settled and certified upon this stipulation instead of upon notice.

PRESTON, CARR & PRESTON,
Attorneys for the Plaintiff.
GEORGE DONWORTH,
Attorney for the Defendants.

(Endorsed:) No. 13085. In the superior court of King county, Washington. National Bank of Commerce, plaintiff, *v.* City of Seattle *et al.*, defendant-. Statement of facts. Filed Jun- 15, 1893. T. W. Gordon, clerk, by H. H. Smith, deputy.

26 STATE OF WASHINGTON, } *ss:*
County of King, }

I, T. W. Gordon, county clerk of King county and *ex officio* clerk of the superior court of the State of Washington for the county of King, do hereby certify that the foregoing is a full, true, and correct transcript of so much of the record in said cause No. 13085 as I am required to transmit to the supreme court on appeal, together with the original statement of facts therein.

I further certify that this record has been held in my office until this time on account of the sickness of Mr. Harold Preston, one of counsel for the appellant, who had sole charge of said matter, it being his desire to examine said record before its transmission to the supreme court.

In testimony whereof I have hereunto set my hand and the seal of said court this 30th day of March, A. D. 1894.

[SEAL OF CLERK.] T. W. GORDON, *Clerk.*

27 In the Supreme Court of the State of Washington.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Appellant,
vs.
THE CITY OF SEATTLE, a Municipal Corporation, and J. M. E. Atkinson, as City Treasurer and *ex Officio* Tax-collector of said City, Respondents. } No. 13085.

It is hereby stipulated between the parties hereto, by their respective counsel, that the brief filed on behalf of the respondents in the other cases of The National Bank of the City of Seattle *vs.* the above-named respondents, now pending in this court, be deemed to have been duly filed in this cause, and that this cause be, and the same is hereby, submitted to the court for its decision upon the argument made in said other cases on June 25th, 1894.

CARR & PRESTON,
Attorneys for Appellant.
W. T. SCOTT,
Corporation Counsel and Attorney for the Respondents.

(Endorsed:) No. 1286. No. 13085. In the supreme court of Washington. National Bank of Commerce, plaintiff, *vs.* The City of Seattle *et al.*, defendant-. Stipulation. Filed July 3, 1894. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

28 In the Supreme Court of the State of Washington.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff,
vs.
THE CITY OF SEATTLE, a Municipal Corporation, and Adolph Krug, as Treasurer and *ex Officio* Tax-collector of the said City of Seattle, Defendants. } No. 13085. Stipulation.

Whereas the transcript upon appeal to the supreme court in the above-entitled case has been withheld from transmission to the supreme court for the convenience of the parties, plaintiff and defendant, and their respective counsel, and therefore the clerk of the superior court of the county of King has been unable to complete the transcript and transmit the same: It is therefore stipulated between the parties, by their respective counsel, that the said transcript shall be transmitted within thirty days from this date, and that when so transmitted it shall stand as if filed on a date within the time allowed by law for its transmission, and no objection shall be made by either party to the fact that the same was not transmitted sooner or within the time provided by law for the transmis-

sion of transcripts upon appeal. Respondent is allowed thirty days from this date to file its brief.

Done this 12th day of March, A. D. 1894.

CARR & PRESTON,
Attorneys for Plaintiff.
GEORGE DONWORTH,
Corporation Counsel of the City of Seattle.

(Endorsed:) No. 13085. In the superior court of King county, Washington. The National Bank of Commerce of Seattle, plaintiff, *vs.* The City of Seattle *et al.*, defendant-. Stipulation. No. 1286. Filed Apr. 3, 1894. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

29 In the Supreme Court of the State of Washington.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Appellant, *vs.* THE CITY OF SEATTLE, a Municipal Corporation, and Adolph Krug, as Treasurer and *ex Officio* Tax-collector of the said City of Seattle, Respondents.	No. —. Stipulation.

It is hereby stipulated by and between the attorneys for the appellant and the attorneys for the respondents herein that this case may be assigned for hearing at the May term of the supreme court of the State of Washington, and the clerk of said supreme court is hereby requested to place the said case upon the docket for assignment at said May term, 1894.

Dated at Seattle, Washington, this 5th day of April, A. D. 1894.

CARR & PRESTON,
Attorneys for Appellant.
W. T. SCOTT,
Attorney for Respondents.

(Endorsed:) No. 1286. In the supreme court of the State of Washington. The National Bank of Commerce of Seattle, plaintiff, *vs.* The City of Seattle *et al.*, defendant-. Stipulation. Filed Apr. 9, 1894. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

30 THE WASHINGTON NATIONAL BANK OF SEATTLE, Appellant,
v.
THE COUNTY OF KING and BYRON PHELPS, County Treasurer and *ex Officio* Tax-collector of said County, Respondent-. } #1280.

THE COMMERCIAL NATIONAL BANK OF SEATTLE, Appellant,
v.
THE COUNTY OF KING and BYRON PHELPS, County Treasurer and *ex Officio* Tax-collector of said County, Respondents. } #1281.

THE WASHINGTON NATIONAL BANK OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } #1282.

THE COMMERCIAL NATIONAL BANK OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } #1283.

THE FIRST NATIONAL BANK OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } #1284. Filed Oct. 22, 1894.

THE BOSTON NATIONAL BANK OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } #1285.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } #1286.

THE PUGET SOUND NATIONAL BANK OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } #1287.

THE SEATTLE NATIONAL BANK, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } #1288.

31 The complaints in these cases were drawn with a view to

obviate the objections sustained to the complaint in First National Bank of Aberdeen *v.* The County of Chehalis *et al.*, 6th Wash., 64. This endeavor is made by the allegation that certain taxable moneyed capital, alleged in the former case to be "owned by citizens of said State resident in said county and there invested in loans and securities to them payable and owing by other citizens of said State residing in said county," is "owned by individual citizens of said State resident in said county (or city) and there invested in interest-bearing loans, discounts, and securities to them payable and owing by other citizens of said State residing in said county (or city) of vast amount." It is also alleged in these cases that the capital referred to is "all the moneyed capital in the State owned by resident individual citizens and invested as aforesaid in interest-bearing loans, discounts, and securities, except that owned by and invested in incorporated banks located in this State," and that it was purposely omitted from assessment and taxation.

In these cases our attention is particularly called again to the case of Boyer *v.* Boyer, 113 U. S., 689, and it is claimed that the allegations contained in the complaints before us, as well as in the case of First National Bank of Aberdeen *v.* The County of Chehalis *et al.*, *supra*, are equally as strong as those of the Boyer case, in which the Federal Supreme Court held that answer should be made to the allegations of the bill, while, as was remarked in Mercantile Bank *v.* New York, 121 U. S., 138, in the Boyer case no attempt was made "to define the meaning of the words 'moneyed capital in the hands of individual citizens,' as used in the statute, or to enumerate all the various kinds of property or investments that came within its description, or to show that shares of stock in the hands of stockholders of every institution, company, or corporation of a State, having a capital employed for the purpose of earning dividends or profits for its stockholders, were taxable as
32 moneyed capital in the hands of individual citizens," it was made to appear in the former case that the burden of county taxation had, by the Pennsylvania act of 1844, been removed from a large body of certain specific moneyed capital which came into competition with capital invested in national banks, and that therefore a discrimination existed against the latter. The capital exempted for purposes of local taxation was made taxable for State purposes, but the stock of national banks was by the Pennsylvania act of 1870 taxable both for State and county purposes. In this a discrimination was held to exist, and for that reason an answer was required to the bill.

But whatever may be said of the decision in Boyer *v.* Boyer, it seems clear to us that the case of Mercantile Bank *v.* New York, while it does not overrule the decision in the former case, so clearly sets forth the principles upon which alone the question of what is "moneyed capital in the hands of individual citizens" can be decided that it is at least doubtful whether a like ruling would have been made had the two cases been considered together, at least as to some of the items set forth in the bill. The facts upon which the court ruled in Mercantile Bank *v.* New York are clearly set forth

on page 146 of the report, and it is held that no discrimination existed by reason of the exemption of certain capital from taxation in the State of New York, because, according to subsequent definitions laid down in the decision, it does not constitute "moneyed capital in the hands of individual citizens" within the meaning of the act.

Now, in the cases before us, it may be that the allegation that the unassessed capital being "all the moneyed capital owned by resident individual citizens and invested in interest-bearing loans, discounts, and securities, except that owned by and invested in incorporated banks," may include capital the exemption of which would create a discrimination as against that of national banks, provided the amount of the exemption was great enough in volume to be
33 considered material; but the difficulty with the complaints is that they are general in their language and do not set forth with the particularity even of the Boyer case the classes of unassessed moneyed capital with clearness sufficient to enable the court to say that any material quantity of moneyed capital coming into competition with that of national banks has been left unassessed.

The only attempts made in the complaints to designate the classes of capital alleged to have been exempted by the assessors is through the allegation that moneyed capital invested in the stocks and bonds of insurance, wharf, and gas companies is not intended to be included in the term "moneyed capital" as used by the pleader. Now, without attempting an analysis, it is clear from the Mercantile Bank case that investments of money can be made in various ways, and even in loans and discounts, without necessarily bringing such investments within the term "moneyed capital" as used in the act of Congress. The conclusion of the whole matter seems to us to lie in the language used by the Supreme Court of the United States in this wise:

"The terms of the act of Congress therefore include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way—invested in loans or in securities for the payment of money—either as an investment of a permanent character or temporarily with a view to sale or repayment and reinvestment."

It is moneyed capital of this class, employed in carrying on operations of the same character as those which are within the powers of national banks, which comes into competition with the business of national banks, and such capital in the hands of individual owners is what is intended to be described by the act of Congress,
and until it appears that there is some considerable amount
34 of moneyed capital of this kind employed in this way, which

is exempted by operation of law or by the wilful act of the assessors, a case is not made showing a discrimination against national banks.

A further point is made in this case, viz., that the revenue law of 1893 unconditionally repealed the revenue law of 1891 and contains no saving clause covering uncollected taxes on personal property, and that therefore the treasurers of the county of King and of the city of Seattle are without power or authority to proceed with the collection of such taxes. It is true that sec. 137 of the revenue law of 1893 in sweeping terms repeals all acts theretofore enacted providing for the assessment and collection of taxes. The unpaid taxes on real property are clearly saved by the terms of sec. 136, but if the taxes on personalty are preserved at all the saving clause is found in sec. 75 of the act. It cannot be presumed for a moment that it was the intention of the legislature to release unpaid taxes from so recent an assessment as that of the year 1891, and we think it would be the duty of this court to construe any even doubtful provisions which might be found in the act of 1893 as fairly tending to show an intention on the part of the legislature to preserve the right to collect unpaid taxes, notwithstanding the repeal of all former laws on the subject of taxation. Now, sec. 75 occurs in a portion of the act which is unquestionably devoted to the future operation of the law, and with other sections it lays out a complete scheme for the assessment and collection of taxes on personal property; and, as a finale to the whole and notwithstanding that the matter contained in sec. 73 would seem to terminate the power of the treasurer to collect personal taxes after the lapse of a limited period, sec. 75 seems to continue both the power and duty of the treasurer and his successors in office indefinitely until the taxes have been paid. At the close of this section occur these words: "This section shall apply to all assessment-rolls and the warrants thereto attached which have been heretofore issued, upon which taxes may be due and unpaid, as well as those hereafter issued," which is to say, in the language of the first part of the section, that the "power and duty" to collect any personal-property tax due and unpaid shall continue in and devolve upon the county treasurer and his successors in office until the tax is paid. Now, if the power and duty remain with the treasurer, then, notwithstanding the terms of the repealing section, the act of 1891 must be continued in existence so far as may be necessary to the exercise of that power and the performance of that duty, since without the existence of the law the treasurer has neither power to act nor duty to perform. The various sections of the act must be construed together and harmonized if possible, so that if it were impossible to say that this power and duty should continue in the treasurer in view of the positive terms of the repealing section, then, of course, the latter section, being the last in the act, would prevail; but as it is not unreasonable, both can stand. Taking it all and all, and considering secs. 75 and 136, the effect of the repealing section is simply to make the act of 1893 a future revenue law, leaving unpaid taxes under former laws to be collected either

as prescribed in those laws or according to the new methods of the later law, when it is so directed. The judgment of the superior court sustaining the demurrers will be affirmed.

STILES, *J.*

We concur.
DUNBAR, *J.*
HOYT, *J.*
SCOTT, *J.*
ANDERS, *J.*

36 In the Supreme Court of the State of Washington.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Appellant,
vs.
THE CITY OF SEATTLE and J. M. E. ATKINSON, as Treas., Respondents.
No. 1286.

THURSDAY, *November 22d*, 1894.

This cause having been heretofore submitted to the court on the transcript of the record of the superior court of King county and upon the argument of counsel, and the court having fully considered the same and being fully advised in the premises, and having filed its opinion in writing, it is now, on this 22d of November, A. D. 1894, on motion of W. T. Scott, Esquire, of counsel for respondent, considered, adjudged, and decreed that the judgment of the said superior court be, and the same is hereby, affirmed with costs, and that the said The City of Seattle and J. M. E. Atkinson, as treasurer, have and recover of and from the said The National Bank of Commerce of Seattle and from M. D. Ballard and Thomas W. Prosh, sureties, the costs of this action, taxed and allowed at twenty-five dollars, and that execution issue therefor; and it is further ordered that this cause be remitted to the said superior court for further proceeding in accordance with the opinion herein filed.

Record, vol. 3, page 333.

37 In the Supreme Court of the State of Washington.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff, Appellant,
vs.
THE CITY OF SEATTLE and JOHN M. E. Atkinson, as Treasurer and *ex Officio* Tax-collector of said City (Successor in Office of and Substituted in this Action for Adolph Krug), Defendants, Respondents.
No. —. Petition for Writ of Error.

To the honorable the chief justice of the supreme court of the State of Washington:

The petition of The National Bank of Commerce of Seattle, plaintiff and appellant in the above-entitled action, respectfully shows:

That your petitioner is the plaintiff and appellant in the above-entitled action, and that final judgment therein was rendered and filed in this court on the 22nd day of October, 1894, and entered on the 22nd day of November, 1894, in and by which judgment the judgment of the superior court of King county, State of Washington, dismissing the complaint of the petitioner and rendering judgment in favor of the defendants and against your petitioner for costs was affirmed; that said final judgment rendered by this court in said action was greatly to the prejudice and injury of your petitioner; which said judgment and the proceedings leading thereto are erroneous in many particulars; that in said action there was drawn in question the validity of an act of the legislature of the State of Washington entitled "An act to provide for the assessment and collection of taxes in the State of Washington and declaring an emergency," approved March 7th, 1891; which
38 said act, and especially section 21 thereof, was claimed by your petitioner to be in conflict with and repugnant to section 5219 of the Revised Statutes of the United States, and also to be in conflict with and repugnant to the Constitution of the United States, but the decision and judgment of this court upon said act was in favor of the validity of said act and sustained the validity thereof against the contention of your petitioner; that in said action your petitioner claimed that the provisions of the charter of the city of Seattle adopting said act of the legislature of the State of Washington as a method for the assessment and collection of taxes in said city was repugnant to section 5219 of the Revised Statutes of the United States and to the Constitution of the United States; that the decision of this court was in favor of the said provisions of the charter of the city of Seattle and against the contention of your petitioner; that in said action your petitioner also claimed that the method of the enforcement of the said act of the legislature of the State of Washington for the assessment and collection of taxes in said State was in conflict with said section 5219 of the Revised Statutes of the United States, and that your petitioner and its stockholders were thereby relieved from all taxation under said act of the legislature of the State of Washington and under the laws of the State of Washington, but that this court decided against the claim of your petitioner.

Wherefore, in order that your petitioner may obtain relief in the premises and have opportunity to show the errors complained of, your petitioner prays that it may be allowed a writ of error in said cause, and that a supersedeas in said cause be allowed your petitioner; that said cause be transmitted to the honorable the
39 Supreme Court of the United States, at Washington, to determine said errors, and that proper orders touching the security required of your petitioner may be made.

And your petitioner will, as in duty bound, ever pray, etc.

CARR & PRESTON AND
JAMES B. HOWE,
Attorneys for Plaintiff.

(Endorsed.) #1286. In the supreme court of the State of Washington. The National Bank of Commerce of Seattle, plaintiff, appellant, *vs.* The City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city (successor in office of and substituted in this action for Adolph Krug), defendants, respondents. Petition for writ of error. Filed Nov. 22, 1894. C. S. Reinhart, clerk.

40 In the Supreme Court of the United States.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff in Error,
vs.
THE CITY OF SEATTLE and J. M. E. ATKINSON, as Treasurer and *ex Officio* Tax-collector of said City (Successor in Office of and Substituted in this Action for Adolph Krug), Defendants in Error.
} Assignment of Errors.

Afterwards, to wit, on the 22nd day of November, 1894, comes The National Bank of Commerce of Seattle, plaintiff in error, by its attorneys, James B. Howe and Carr & Preston, and says that in the record and proceeding- in the above-entitled action there is manifest error in this, to wit:

I.

The superior court of King county erred in refusing to allow the plaintiff, here the plaintiff in error, to introduce evidence in support of the allegations of its complaint; erred in refusing to allow the plaintiff to introduce any evidence whatever; erred in sustaining the objection interposed by the defendants, here the defendants in error, to the introduction of any evidence whatsoever.

II.

The supreme court of the State of Washington erred in affirming the judgment of the said superior court, notwithstanding the aforesaid error of the superior court.

III.

The said superior court erred in sustaining the objections (demurrer *ore tenus*) interposed by the defendants to the complaint.

IV.

41 The said supreme court erred in affirming the judgment of said superior court, notwithstanding the aforesaid error of the superior court in sustaining said objection or demurrer *ore tenus*.

V.

The said superior court erred in rendering judgment of dismissal.

VI.

The supreme court erred in affirming the said judgment of dismissal of said superior court.

VII.

The said superior and supreme courts erred in deciding that the assessment complained of was not an assessment upon the plaintiff in error of its capital stock *in solido*, and therefore void because in contravention of the provisions of sections 5214 and 5219 of the Revised Statutes of the United States.

VIII.

The said superior and supreme courts erred in deciding that the said assessment and the threatened levy thereunder directly upon the property of the plaintiff was not a taxation of the capital of the plaintiff in error forbidden by the provisions of section 5219 of the Revised Statutes of the United States and also by the provisions of the Constitution of the United States.

IX.

The said superior and supreme courts erred in deciding that the revenue laws of the State of Washington and the charter of the city of Seattle in force at the time of said assessment and levy are not in conflict with the provisions of section 5219 of the Revised Statutes of the United States, and with the provisions of the
42 Constitution of the United States, because a tax upon the capital of the plaintiff in error is thereby expressly required.

X.

The said superior and supreme courts erred in deciding that section 21 of the revenue act of 1891 of the State of Washington (entitled "An act to provide for the assessment and collection of taxes in the State of Washington and declaring an emergency," approved March 9th, 1891) is not in conflict with the provisions of section 5219 of the Revised Statutes of the United States and also with the Constitution of the United States, because a tax upon the capital of the plaintiff in error is thereby expressly required.

XI.

The said superior and supreme courts erred in refusing to hold that the only legislation of the State and city upon the subject of taxation of bank stock or capital being void for the reasons stated in the foregoing assignment No. 10, therefore the shares of the capital stock of the plaintiff in error were exempted from taxation, and the said assessment and threatened levy deprive the plaintiff in error of its property without due process of law.

XII.

The said superior and supreme courts erred in holding that the adm tted intentional omission from taxation of six millions of tax-

able moneyed capital in the hands of individual citizens of the State residing in said city and invested in interest-bearing private loans and securities, to them payable and owing by other citizens of the State residing in the said city out of a total of taxable
43 moneyed capital in the city of $8,300,000.00, was an omission of so material a portion relatively of the whole of such moneyed capital as to create an unequal and unfriendly competition against the plaintiff in error and as to amount to an unfriendly discrimination against the moneyed capital invested in the shares of the capital stock of plaintiff in error, and in not holding that for that reason the tax is void *in toto*.

XIII.

The said superior and supreme courts erred in holding that the revenue laws of the State of Washington (act approved March 9th, 1891, aforesaid) and the city charter contemplated such omission and consequent discrimination and were not invalid for so providing.

XIV.

The said superior and supreme courts erred in refusing to decide that the method of assessment pursued and the resulting discrimination against national-bank shares violated the provisions of sections 1, 2, and 3 of article 7 of the constitution of the State of Washington, and therefore the assessment should be annulled and the levy restrained.

XV.

The said superior and supreme courts courts erred in not deciding that shares of national-bank stock are not permitted by the provisions of section 5219 of the Revised Statutes of the United States to be taxed by municipal corporations, and therefore the assessment should be annulled and the levy restrained.

XVI.

44 The said superior and supreme courts erred in deciding that the assessment to the plaintiff in error of 2,511 shares of the capital stock (at par), whereas its total capitalization consisted at the time of the assessment of 1,000 shares, did not of itself invalidate the entire assessment.

XVII.

The said superior and supreme courts erred in deciding that the assessment to the plaintiff in error of 2,511 shares of its capital stock was not such a discrimination against the moneyed capital invested in the 1,000 shares which at the time of the assessment comprised its total capitalization as to render invalid the entire assessment because violative of the provisions of section 5219 of the Revised Statutes.

Wherefore the said The National Bank of Commerce of Seattle,

plaintiff in error, prays that the judgment of the said superior and supreme courts of the State of Washington be reversed.

CARR & PRESTON,
JAS. B. HOWE,
Attorneys for the Plaintiff in Error.

(Endorsed:) 1286. In the Supreme Court of the United States. The National Bank of Commerce of Seattle, plaintiff in error, *vs.* The City of Seattle and J. M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city (successor in office of and substituted in this action for Adolph Krug), defendants in error. Assignment of errors. Filed Nov. 22, 1894. C. S. Reinhart, clerk.

45 In the Supreme Court of the State of Washington.

The National Bank of Commerce of Seattle, Plaintiff, Appellant, *vs.* The City of Seattle and John M. E. Atkinson, as Treasurer and *ex Officio* Tax-collector of said City (Successor in Office of and Substituted in this Action for Adolph Krug), Defendant-, Respondents.	No. 1286. Order Granting Writ of Error.

Now, on this 22nd day of November, 1894, on hearing read the petition of The National Bank of Commerce of Seattle, the plaintiff and appellant in the above-entitled action, praying for the allowance of a writ of error from the Supreme Court of the United States to the supreme court of the State of Washington, and it appearing by said petition and by the record in the above-entitled case that said case is a proper case for the allowance of said writ: now, therefore, it is—

Ordered by the undersigned, the chief justice of the supreme court of the State of Washington, that said writ be, and the same is hereby, allowed, and that the said National Bank of Commerce of Seattle execute to the defendants in said suit its bond, with sureties thereon to be approved by the undersigned, in the sum of one thousand dollars, and said bond when executed and approved by the undersigned shall operate as a supersedeas bond in said action, and thereupon all further proceedings upon the judgment rendered by this court in said action shall be stayed pending the hearing and determination of said writ of error by the United States Supreme Court.

Dated this 22nd day of November, 1894.

R. O. DUNBAR,
Chief Justice of the Supreme Court of the State of Washington.

Entered, Journal, vol. 3, pg. 337.

46 (Endorsed:) 1286. In the supreme court of the State of Washington. The National Bank of Commerce of Seattle, plaintiff, appellant, *vs.* The City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city (successor in office of and substituted in this action for Adolph Krug), defendants, respondents. Order granting writ of error. Filed Nov. 22, 1894. C. S. Reinhart, clerk.

47 In the Supreme Court of the United States.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff, Appellant, *vs.* THE CITY OF SEATTLE and JOHN M. E. ATKINSON, as Treasurer and *ex Officio* Tax-collector of said City (Successor in Office of and Substituted in this Action for Adolph Krug), Defendants, Respondents.	No. —.	Bond.

Know all men by these presents that we, The National Bank of Commerce of Seattle, in the State of Washington, as principal, and R. R. Spencer and E. I. Sweeney, as sureties, both of the city of Seattle, in said State of Washington, are held and firmly bound unto the city of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city, in the full and just sum of one thousand dollars, to be paid to the said city of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city, their successors and assigns; to which payment, well and truly to be made, we do hereby bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22nd day of November, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a session of the supreme court of the State of Washington, in a suit pending in said court between The National Bank of Commerce of Seattle, as plaintiff, and The City of Seattle and John M. E. Atkinson, as treasurer *as treasurer* and *ex officio*
48 tax-collector of said city, a final judgment was rendered by said supreme court of the State of Washington against the said plaintiff and in favor of said defendants, and the said plaintiff having obtained a writ of error and filed the same, together with a copy thereof, in the clerk's office of the said supreme court of the State of Washington to reverse said judgment in the aforesaid suit, and a citation directed to the said City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city, citing and admonishing them and each of them to be and appear at the Supreme Court of the United States, to be holden at Washington, on the 21st day of January, 1895:

Now, the condition of the above obligation is such that if The National Bank of Commerce aforesaid shall prosecute said writ of error to effect and answer all damages and costs if it fail to make

said plea good, then this obligation to be void; else to remain in full force and virtue.

THE NATIONAL BANK OF COMMERCE,
By R. R. SPENCER, *Cas.* [SEAL.]
R. R. SPENCER. [SEAL.]
E. I. SWEENEY. [SEAL.]
——— ———. [SEAL.]

Signed, sealed, and delivered in the presence of—
C. HAVERS.
W. R. BELL.

[Seal of National Bank of Commerce.]

49 STATE OF WASHINGTON, } *ss:*
County of King, }

R. R. Spencer and E. I. Sweeney, being first duly sworn according to law, on their oaths respectively do say, each for himself, that he is one of the sureties who signed and sealed the within bond; that he is above the age of twenty-one years; that he is a *bona fide* resident of the State of Washington and property-holder therein; that he is neither a counselor nor attorney at law, sheriff of a county, clerk of superior court, nor other officer whatever of any such court, and that he is worth the sum of one thousand dollars in property situated in the State of Washington over and above all his just debts and liabilities whatsoever, exclusive of property exempt from execution.

R. R. SPENCER.
E. I. SWEENEY.

Subscribed and sworn to before me this 22nd day of November, 1894.

W. R. BELL,
[SEAL.] *Notary Public in and for the State of Washington, Residing at Seattle, in said State.*

The foregoing bond and the sufficiency of the sureties thereon taken and approved by me this 22nd day of November, 1894.

R. O. DUNBAR,
Chief Justice of the Supreme Court of the State of Washington.

Filed Nov. 22, 1894. C. S. Reinhart, clerk.

50 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the justices of the supreme court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Washington, before you or some of you, being the highest

court of law or equity of said State in which a decision could be had in the said suit between The National Bank of Commerce of Seattle, appellant and plaintiff in said court and plaintiff in error in this court, and The City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city, defendants and respondents in said court and defendants in error in this court, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of The National Bank of Commerce of Seattle, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 21st day of January, 1895, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

51 & 52

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 22nd day of November, in the year of our Lord one thousand eight hundred and ninety-four.

A. REEVES AYRES,
Clerk of the Circuit Court of the United States
for the District of Washington.
R. M. HOPKINS, *Deputy.*

{ Seal United States Circuit Court, District of Washington, Northern Division. }

Allowed by—

R. O. DUNBAR,
Chief Justice of the Supreme Court
of the State of Washington.

[Endorsed:] 1286. In the Supreme Court of the United States. The National Bank of Commerce of Seattle, plaintiff in error, *vs.* The City of Seattle and John M. E. Atkinson, as treasurer and *ex*

officio tax-collector of said city (successor in office of and substituted in this action for Adolph Krug), defendants in error. Writ of error. Filed Nov. 22, 1894. C. S. Reinhart, clerk.

53 UNITED STATES OF AMERICA, *ss:*

To the City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city, and each of you, Greeting:

You are cited and admonished to appear at the Supreme Court of the United States, at Washington, on the 21st day of January, 1895, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Washington, wherein The National Bank of Commerce of Seattle is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22nd day of November, 1894.

[Seal of the Supreme Court, State of Washington.]

R. O. DUNBAR,
Chief Justice of the Supreme Court
of the State of Washington.

Attest my hand and seal of said court this Nov. 22d, 1894.

C. S. REINHART, *Clerk.*

54 Received, this 23rd day of November, 1894, a copy of the within citation, and service of the within citation upon the defendants in error is this day acknowledged.

W. T. SCOTT AND
FRANK A. STEELE,
Attorneys for the Defendants in Error.

[Endorsed:] 1286. In the Supreme Court of the United States. The National Bank of Commerce of Seattle, plaintiff in error, *vs.* The City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city (successor in office of and substituted in this action for Adolph Krug), defendants in error. Citation. Filed Nov. 26, 1894. C. S. Reinhart, clerk, by R. B. Crandall, dep'ty.

55 In the Supreme Court of the State of Washington.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff in Error,
vs.
THE CITY OF SEATTLE and J. M. E. ATKINSON, as Treasurer and *ex Officio* Tax-collector of said City (Successor in Office of and Substituted in this Action for Adolph Krug), Defendants in Error.

1286. Certificate.

STATE OF WASHINGTON, *County of Thurston*, } *ss:*

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, do hereby certify that the above and foregoing is a full, true, and correct transcript of the record in the above-entitled cause, and I further certify that in pursuance of the writ of error filed herein I herewith transmit said record to the United States Supreme Court, together with the original writ of error and citation issued herein.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 18th day of January, 1895.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk.*

Endorsed on cover: Case No. 15,789. Washington supreme court. Term No., 223. The National Bank of Commerce of Seattle, plaintiff in error, *vs.* The City of Seattle and John M. E. Atkinson, as treasurer & *ex officio* tax-collector of said city. Filed February 14th, 1895.

166-463

Office Supreme Court, U. S.
FILED
DEC 28 1896
JAMES H. McKENNEY,
CLERK.

166-463

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM. 1896.

No. 223.

THE NATIONAL BANK OF COMMERCE OF SEATTLE,
PLAINTIFF IN ERROR,

VS.

THE CITY OF SEATTLE AND JOHN M. E. ATKINSON,
AS TREASURER AND EX-OFFICIO TAX COLLECTOR OF SAID CITY, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

EUGENE M. CARR,
HAROLD PRESTON,
JAMES B. HOWE,
Counsel for Plaintiff in Error.

Lowman & Hanford Stationery & Printing Co., Seattle.

55 In the Supreme Court of the State of Washington.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Plaintiff in Error,
vs.
THE CITY OF SEATTLE and J. M. E. ATKINSON, as Treasurer and *ex Officio* Tax-collector of said City (Successor in Office of and Substituted in this Action for Adolph Krug), Defendants in Error.

= 1286. Certificate.

STATE OF WASHINGTON, } ss:
County of Thurston, }

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, do hereby certify that the above and foregoing is a full, true, and correct transcript of the record in the above-entitled cause, and I further certify that in pursuance of the writ of error filed herein I herewith transmit said record to the United States Supreme Court, together with the original writ of error and citation issued herein.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 18th day of January, 1895.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk*.

Endorsed on cover: Case No. 15,789. Washington supreme court. Term No., 223. The National Bank of Commerce of Seattle, plaintiff in error, *vs.* The City of Seattle and John M. E. Atkinson, as treasurer & *ex officio* tax-collector of said city. Filed February 14th, 1895.

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AS TREASURER AND EX-OFFICIO TAX COLLECTOR OF SAID CITY, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

STATEMENT.

The plaintiff in error, a national bank located in the City of Seattle, in the County of King, State of Washington, instituted this action in the Superior Court of said county to enjoin the city and its treasurer and ex-officio collector of taxes from levying upon the goods and chattels of the bank, in order to satisfy a tax assessed upon the capital of the bank, which assessment plaintiff alleged was void because forbidden by the Constitution of the United States and the provisions of Sections 5214 and 5219 of the Revised Statutes of the United States. It appears from the complaint that not only was the assessment *in solido* to the plaintiff as owner of all of the shares of the capital stock of the plaintiff, and that the taxation thereof was at a greater rate than was assessed upon other

moneyed capital in the hands of individual citizens of the State of Washington, but also that the capitalization of the plaintiff, at the time fixed by the law of the state for accrual of tax liability was one thousand shares of one hundred dollars each, whereas the assessment was for two thousand five hundred and eleven shares of one hundred dollars each. Folios 1–9. The defendants filed their amended answer, joining issue upon certain allegations of the complaint and admitting others. Folios 10–14. The plaintiff replied, admitting certain of the new matter alleged in the amended answer and denying other. Folios 15–16. Upon the trial the plaintiff offered proof to establish all and singular the allegations of its complaint. The defendants objected to the reception of any evidence in support of the complaint on the ground that the complaint did not state facts sufficient to constitute a cause of action against the defendants or either of them, and the court sustained the objection, the plaintiff excepting, and, the plaintiff electing to stand upon its complaint, the court rendered judgment of dismissal. Folios 17-18. Also folios 23-24-25. The plaintiff appealed from said decree to the Supreme Court of the State of Washington, which court affirmed the decree appealed from, on the ground that the laws of the state, under which the taxation was justified, and the acts of the taxing officer complained of, were not repugnant to any provision of the Constitution of the United States or to Sections 5214 and 5219 of the Revised Statutes of the United States. (Opinion of Court, folies 30-36.)

The plaintiff thereupon sued out a writ of error from this court which was allowed by the Chief Justice of the State, and was duly served. Folios 37 39-45-51 and 52. A citation was duly issued and served. Folios 53-54. The plaintiff in error filed its assignment of errors specifying the errors claimed by it to have been committed by the Supreme Court of the State. Folios 40-44.

The errors assigned in the assignment of errors may be condensed, and so condensed the plaintiff in error relies upon the following specified errors for reversal of the judgment of the Supreme Court of the State:

I.

That Section 21 of the Revenue Law of the State of Washington, approved March 9, 1891, entitled, "An act to provide for the assessment and collection of taxes in the State of Washington, and declaring an emergency," under which, by virtue of the City Charter, the capital stock of the plaintiff in error was assessed and taxed, was and is in conflict with the Constitution of the United States, and with Sections 5214 and 5219 of the Revised Statutes of the United States, and the Supreme Court of the State of Washington erred in not so holding.

II.

That the assessment complained of by the plaintiff in error was an assessment *in solido* to the plaintiff in error as the owner of the whole number of shares of its capital stock, (and 1511 shares in addition thereto) and (disregarding for the moment the excessive listing of shares) amounted to the assessment and taxation of the capital of the plaintiff in error, and was in contravention of the Constitution of the United States and of Sections 5214 and 5219 of the Revised Statutes of the United States, and the Supreme Court of the State of Washington erred in not so holding.

III.

That the Supreme Court of the State of Washington erred in not holding that the taxation of the shares of the capital stock of the plaintiff was at a greater rate than was assessed upon other moneyed taxable capital in the hands of individual citizens of the State of Washington taxable by the city, and therefore conflicted with Section 5219 of the Revised Statutes of the United States.

IV.

That the Supreme Court of the State of Washington erred in not holding that the intentional omission from taxation by the city of $6,282,000 of competing moneyed capital in the hands of individual citizens, taxable in the city, out of a total of such moneyed capital of $8,300,000, accompanied by the assess-

ment of the national bank stock in the city at $266,000 (or 18 per cent.) in excess of capitalization, and of the state bank stock in the city at $282,000 (or 35 per cent.) less than capitalization, was an intentional omission from taxation of so large a part relatively of the entire moneyed capital in the hands of individual citizens and properly taxable, as to amount to a discrimination against the shares of stock of the plaintiff in error, and a willful violation of the provisions of said Section 5219 of the Revised Statutes of the United States.

V.

That the Supreme Court of the State of Washington erred in not holding that the allegations of the complaint, being admitted by the demurrer, showed a plain and clear case of the violation of the Constitution of the United States and of Sections 5214 and 5219 of the Revised Statutes of the United States, by the taxing officers of the City of Seattle, whereby the plaintiff in error and its stockholders were deprived of the equal protection of the law, and of their property without due process of law, and of the protection of sections 5214 and 5219 of the Revised Statutes of the United States.

VI.

The said Superior and Supreme Courts erred in not deciding that the shares of national bank stock are not permitted by the provisions of Section 5219 of the Revised Statutes of the United States to be taxed by a municipal corporation.

VII.

The foregoing assignments of error are not directed to the point of the assessment to the plaintiff of the 1511 shares of stock or $151,100 in excess of its capitalization, which shares of stock did not in fact exist and were not at that time taxable. The Supreme Court of the State of Washington erred in not holding that this fact alone, or, at any rate, taken in connection with the other instances of discrimination, was sufficient to vitiate the assessment, and to require a reversal of the judgment of the Superior Court.

ARGUMENT.

ERROR No. 1.

The Supreme Court of the State of Washington erred in holding that the plaintiff's complaint did not show that the plaintiff's capital had been taxed in violation of the Constitution of the United States and of Sections 5214 and 5219 of the Revised Statutes of the United States.

The assessment in the case at bar was made under Section 15 of Article 9 of the Freeholder's Charter of the City of Seattle, and under Section 21 of an Act of the Legislature of the State of Washington, entitled, "An act to provide for the assessment and collection of taxes in the State of Washington, and declaring an emergency," approved March 9, 1891. Laws of Washington, 1891, pp. 280-289.

Said section of the Charter is as follows:

"Section 15. Except as in this charter otherwise provided, the assessment of property taxable in the city for municipal purposes, the equalization of assessments and collection of taxes, and the sale of property for unpaid taxes, and the redemption of property sold for taxes, shall be made in the same manner and with like effect as now, or as may be provided hereafter by law for the assessment of property, equalization of assessment, levy, collection of taxes, and sale of property for unpaid taxes for state or county purposes, and redemption thereof; and all provisions of law applicable to such assessments, equalization, levy, collection and sale for state and county purposes are hereby applied to and shall be the law governing such assessments, equalization, levy, collection and sale for municipal purposes; and the respective officers of the city shall have, possess and perform the same powers and duties, in all matters concerning revenue and taxation for municipal purposes, as are or may be by law conferred or imposed upon county officers in matters concerning revenue and taxation for state and County purposes, and to that end—

First—All powers and duties so by law conferred or imposed upon county assessors are hereby imposed or conferred upon the city assessor.

Second—All powers and duties so by law conferred or imposed upon the board of county commissioners are hereby

conferred upon and imposed upon the city council and its constituted committees.

Third—All powers and duties so by law conferred or imposed upon the county attorney are hereby conferred and imposed upon the corporation counsel.

Fourth—All powers and duties so by law conferred or imposed upon the county treasurer as tax collector are hereby imposed and conferred upon the city treasurer as city tax collector.

Fifth—All powers and duties so by law conferred and imposed upon the county treasurer are hereby conferred and imposed upon the county clerk and county auditor respectively, are hereby conferred and imposed upon the city clerk and city comptroller respectively."

Said Section 21 of the Act is as follows:

"Section 21. Every individual, firm, corporation or association of persons, carrying on a general banking business in this state, whether the same has been organized under the banking laws of this state or of the United States, or conducted under the style of private bankers, shall be assessed and taxed in the county, town, city or village where such bank or banking association is located and not elsewhere, in the following manner: Annually, at such times as provided for listing property for taxation, every such bank or banking association as contemplated in this section shall, by its accounting officer, furnish the county or city assessor a statement, verified by oath, giving the amount of paid-up capital stock, the amount of surplus or reserve fund and the amount of undivided profits of such bank or banking association. The aggregate amount of capital, surplus, and undivided profits shall be assessed and taxed as other like property in the state is assessed and taxed: Provided, at the time of listing the capital stock, the amount and description of its legally authorized investments in real estate shall be assessed and taxed as other real estate is assessed and taxed under this act, and the assessor shall deduct the amount of such investments in real estate from the aggregate amount of such capital, surplus, and undivided profits, and the remainder then taxed as above provided."

The statute is plain, and there is no room for construction. It would be difficult to use any other language than that used to convey the idea that the thing to be assessed and taxed was the capital of the bank.

Van Allen vs. Assessors, 3 Wall. 573.
Bradley vs. People, 4 Wall. 459.
National Bank vs. Commonwealth, 9 Wall. 353.

Section 23 of said Act of the Legislature is as follows:

"Each bank and banking association shall be liable to pay any taxes assessed against them as the agent of each of its shareholders, owners or owner under the provisions of this act, and may pay the same out of their undivided profit account or charge the same to their expense account, or to the accounts of such shareholders, owners or owner in proportion to their ownership."

The aforesaid revenue act in seeking to impose a tax upon the capital of the bank, in terms exempted from taxation the shares of the capital stock of the bank.

Section 8 of the Act is as follows:

"Section 8. Personal property shall be listed in the manner following: First, every person of full age and sound mind, being a resident of this state, shall list all his moneys, bonds or stock, shares of stock of joint stock or other companies (when the property of such company is not assessed in the state), franchises, royalties and other personal property; second, he shall also list separately, and in the name of his principal, all moneys deposited subject to his order; third, the property of a minor child shall be listed by his guardian or by the person having such property in charge; fourth, the property of an idiot or lunatic, by the person having charge of such property; fifth, the property of a person for whose benefit it is held in trust by the trustee of the estate of the deceased person, or by the executor or administrator; sixth, the property of corporations whose assets are in the hands of receivers, by such receivers or their agents; seventh, the property of a body politic or corporate, by the president or proper agent or officer thereof; eighth, the property of a firm or company, by a partner or agent thereof; ninth, money and property in litigation, in possession of any county officer must be assessed to the custodian thereof, and the taxes thereon paid by the custodian thereof under the direction of the court."

So far as Section 23 of the Revenue Act of 1891 requires the

bank to pay the tax and charge the same to its expense account, the tax is a direct tax upon the bank itself.

City of Boston vs. Beal, 51 Federal Reporter, 306.
Affirmed, 55 Federal Reporter, 26.

So far as said Section 23 of the said Revenue Act requires the bank to either pay the tax out of undivided profit account or charge the same to expense account or to stockholders, the liability to pay (as construed by the taxing officers in this case by their acts, and by the State Court) is absolute and immediate without regard to ability to pay, existence of undivided profits, or condition of accounts of stockholders.

Therefore the tax is a tax upon the bank.

It is respectfully submitted that Section 23 does nothing more than provide a method for the collection, while Section 21 is the only authority for the assessment of the tax.

That a lawful provision for collecting a tax cannot impart validity to an unlawful provision for its assessment, seems too clear for argument; yet the Supreme Court of the State seems to confound the method of collection with the power to assess, and holds that the end justifies the means.

ERROR NO. 2.

The assessment complained of by the plaintiff in said action was an assessment in solido to the plaintiff as the owner of the whole number of the shares of its capital stock, and amounted to an assessment and taxation of the capital of the plaintiff, and was in contravention of the Constitution of the United States, and of Sections 5214 and 5219 of the Revised Statutes of the United States, and the Supreme Court of the State of Washington erred in not so holding.

Such an assessment and levy is in violation of and is forbidden by the provisions of the Act of Congress permitting an assessment by the State of the shares of national banks to the individual owners thereof, and is therefore void.

Revised Statutes of the United States, Section 5219.

National banks may be taxed by the State only to the extent granted by the permissive provisions of said section 5219.

Covington City National Bank vs. City of Covington, et al., 21 Federal Reporter, 484.

Osborn vs. U. S. Bank, 9 Wheaton, 738.

The proprietary interest of the individual in shares of the stock of a national bank is subject to taxation by the State only to the extent granted by the permissive provisions of said section.

Mercantile National Bank vs. City of New York, 28 Fed. Rep. 776.

People vs. Weaver, 100 U. S. Reports, 539-543.

Boyer vs. Boyer, 113 U. S. 689.

Wasson vs. First National Bank, 107 Ind. 206.

Maguire vs. Board of Revenue, 71 Ala. 401.

The assessment and the taxation of all the shares of the stock of a national bank *in solido* to the bank direct, as owner thereof, constituted a tax upon the bank forbidden by said Section 5219 and rendered void thereby.

First National Bank of Richmond vs. City of Richmond et al., 39 Fed. Rep. 309.

National Bank of Virginia vs. City of Richmond et al., 42 Fed. Rep. 877.

First National Bank of Leoti vs. Fisher, 45 Kansas, 726.

Collins vs. Chicago, 4 Bissell, 472.

Miller vs. First National Bank, 46 Ohio St. 424.

In the case last cited, the invalidity of such a form of taxation was clearly pointed out. In that case the court said:

"As regards the bank, there is but one question in the case that needs to be determined,—for the determination of it will dispose of all the others that have been raised—that is, whether the shares of stock in a national bank are to be listed for taxation in the names of the shareholders or in the name of the bank. The power of a state to impose any tax upon such shares is conferred by the statutes of the United States,—Sec-

tion 5219, Revised Statutes. This is not controverted. It is also true that the property of a national bank, other than its realty, cannot be subjected to taxation by a state or any of its subdivisions. The power conferred by the section just referred to, is to include the 'shares' in the valuation of the personal property of the 'owner' or 'holder' of such shares. The bank does not own the shares of its capital. It owns the capital and the shares are owned by its shareholders. The capital is corporate property; the shares in it are the individual property of its shareholders. It is the latter that may be taxed, and not the former. No authority is conferred to assess them for taxation against the bank itself; and, to so assess them, would be but another form of taxing the capital of the bank itself, which no one contends could be done, without the authority of Congress. A share in a bank is but a fractional part of its capital owned by one who contributed an equivalent part of the capital, or his transferee; and the aggregate of all the shares held by individuals in a bank is equal to the aggregate of the capital; so that, if all the shares in a bank were assessed for taxation in its name, and payment of a tax required of it, the effect would be precisely the same as a tax upon the aggregate capital of the bank. Again, as the shares are to be assessed for taxation according to their true value in money, a tax so levied would extend to and include all the property of the bank, its personalty, in the valuation placed on the shares in its capital stock, and its realty, under the exception contained in Section 5219, Revised Statutes of the United States. It seems, then, to follow, as a necessary result, that shares in a national bank must be assessed for taxation in the names of the owners of them, and not in the name of the bank itself. The language of the statute under which the power is conferred on a state to tax such shares is such; and the power conferred must be confined to the language; or the exemption of the bank itself from taxation may be reduced to an empty expression."

The case of Bank vs Commonwealth, 9 Wallace, 353, does not support the decision of the Supreme Court of the State in this case.

An examination of that case will show that it has no application to the case at bar. In that case it was sought to hold the bank liable for a tax assessed upon the shares of its stockholders, but the assessment had been made against the stockholders. In the case at bar the assessment was made directly

to the bank and not to to the stockholders. In the case cited suit was brought against the bank and this court held that the suit was in the nature of a garnishment proceeding.

In the case at bar the bank was not sued at all. The collector of taxes was about to levy upon the property of the bank before obtaining judgment against the bank, and without regard to the question of the indebtedness of the bank to its shareholders.

The distinction between the two cases is clearly pointed out in the case of

Hershire vs. First Nat. Bank, 35 Iowa, 272.

ERRORS NOS. 3, 4 AND 5.

The Supreme Court of the State erred in not holding that the complaint showed that the taxation of the shares of capital stock of the plaintiff was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of the State, resident and taxable in the City, and therefore was void under Section 5219 of the Revised Statutes of the United States.

The total moneyed capital owned by residents of the City on April 1st, 1891, invested there in loans at interest and in interest bearing notes and securities, exclusive of that invested in shares of stock of national banks and banks incorporated under the laws of the State, was $6,000,000. Folio 6. The total capitalization of national banks in the city was then $1,500,000 and that of state banks $800,000. The national banks were assessed at a minimum of $1,766,000, or an increase (approximately) of 18 per cent. over their total capitalization. The state banks were assessed $518,080, or a decrease (approximately) of 35 per cent. of their total capitalization. All of this $6,000,000 of moneyed capital invested in loans at interest and in interest bearing notes and securities, was purposely omitted from taxation by the taxing officers (Folios 6-7), and the omission was in pursuance of a pre-arranged scheme between the several taxing officers throughout the State, to which the City and its

taxing officers became parties. This "other moneyed capital" was "in the hands of individual citizens of the State" and was taxable. Folios 6-7. The borrowers and payors were likewise residents of the City.

The following table condenses the figures above given, to-wit:

National bank capitalization	$ 1,500,000 00
State bank Capitalization	800,000 00
In the hands of resident individual citizens, omitted	6,000,000 00
Total taxable moneyed capital	$ 8,300,000 00

The assessment thereof was as follows:

National bank stock	$ 1,766,000 00
All other moneyed capital	518,080 00
Total assessment	$ 2,284,080 00

It will be seen, therefore, that while the shares in national banks in the city were assessed at an average of 18 per cent. above par, the shares of banks organized under the laws of the State were assessed at 35 per cent. below par; while $6,000,000 of competing moneyed capital in the hands of individual citizens, or 75 per cent. of the total competing moneyed capital in the City, was designedly omitted from taxation.

It cannot be doubted from the foregoing statement, that the withdrawal from taxation of 75 per cent. of the total moneyed capital in the hands of individual citizens in the city, had the effect of taxing national bank shares at a greater rate than the remaining moneyed capital in the hands of individual citizens was taxed.

In this connection it is proper to call attention to the important fact that this omitted moneyed capital was taxable (Paragraph XIX of the complaint). The levy was at the rate of four and one-half ($4\frac{1}{2}$) mills on each dollar of valuation. It seems clear that if the $6,000,000.00 of omitted taxable capital had not been omitted, the rate of levy upon bank stock

as well as other taxable property would have been lowered. But the forbidden discrimination resulted particularly from imposing a rate of four and one half mills upon national bank stock and no rate at all upon the $6,000,000.00 of omitted competing capital. It seems too plain to admit of argument, that the omission of $6,000,000.00 out of a total of $8,000,000.00 of taxable moneyed capital is an unlawful discrimination against the moneyed capital that is taxed.

It cannot be gathered from the opinion of the Supreme Court of the State whether it considers the missing allegations to be those which should go to show that the class of moneyed capital omitted is such as comes in competition with national banks, or such as would go to show that the amount thereof is considerable in relation to the total of such capital in existence, or, whether the court was unable to find either of these necessary facts sufficiently alleged.

The embarrassment of the Supreme Court of the State in this connection is nowhere more pointedly evidenced than in the communication subsequently addressed by the Supreme Court, in compliance with the mandate of the State Constitution, to the Governor of the state, calling his attention to apparent defects in the laws of the state, wherein this language is used:

"Twice this Court has been called upon to review cases involving the assessment of the stock of national banks for taxation. The First National Bank of Aberdeen vs. The County of Chehalis, 6 Washington, 64; Washington National Bank vs. The County of King, decided October 22, 1894. In both cases the assessments were upheld, but in both, the decision was arrived at only upon a construction of the law which was not satisfactory to this Court, to say the least. These cases have been appealed to the Supreme Court of the United States, and it is not at all beyond the bounds of possibility that that tribunal may come to a different conclusion. The trouble with the statute upon this subject is, that it is obscure, involved and uncertain, and there is great danger that unless it is revised, there will come a time when the State will be practically without a law for the proper taxation of the property of banks and other financial institutions and

particularly national banks. A careful revision of this subject should be made, with a special view to the avoidance of double taxation and in the light of the experience of other states, to the end that this vexed question may be set at rest."

Public Documents, State of Washington, 1894–5, Report of Supreme Court, paragraph 6, pp. 6–7.

These facts certainly appear from the complaint: The omitted capital—

1. Was moneyed capital;
2. Was taxable;
3. Was not invested in bank stock;
4. Was owned by individual citizens who resided in the city;
5. Was loaned at interest;
6. Was loaned to other individual resident citizens;
7. Was invested in interest bearing loans and securities;

therefore excluded from consideration the accounts denominated by the Supreme Court, in its opinion in First National Bank of Aberdeen vs. County of Chehalis, as *mere debts;* excluded store bills, demands for torts committed, capital invested in shares of stock of incorporated bodies of all kinds, not competing.

8. Formed a very material point relatively (75 per cent.) of the total moneyed capital in the hands of individual citizens within the jurisdiction levying the tax upon the shares of the plaintiff.

The Supreme Court of the State in considering the allegations of the complaint, applied a very different rule of law in testing the sufficiency of the complaint from that which in Holland vs. Isaacs, 4 Wash. 54, it announced to be the correct one:

"As to the rule of construction to be recognized, Section 94 (Code) provides that: In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed. All prior forms of pleading were abolished by the Code and it prescribed what they should be thereafter and also the rule by which their sufficiency should be determined.

In Chambers vs. Hoover, 3 Wash. Ter. 110, speaking of the complaint in that case, to which a demurrer had been interposed, Turner, J., says:

"'The averments of this pleading are vague and indefinite and it is defective in other respects, yet when bolstered by the rule of liberal construction commanded by the code, we think we discern a cause of action. A suitor is no longer to be turned out of court if by making all reasonable intendments in his favor, enough can be seized hold of in his pleadings to show that he has rights which ought to be enforced. He may be required on motion to conform his statements to the rules of good pleading, and if he refuse, may be turned out of court, but as against a demurrer, the office of which is to raise a substantial issue on the law of the case and not on the law of practice and pleading, evidentiary facts and even inferences from averments amounting to mere conclusions of law, will be considered in his favor.' * * *

"Under our practice, the old rule that the pleading must be most strongly construed against the pleader is not recognized. It must be liberally construed with an aim to arrive at substantial justice between the parties."

It is respectfully submitted, however, that the plaintiff in error is not, in order to obtain a reversal of the judgment of the Supreme Court of the State, compelled to invoke the liberal rule of pleading formerly announced by that court.

It is confidently asserted that tested by the rule established by this Court in Boyer vs. Boyer, 113 U. S. 689, and Mercantile Bank vs. New York, 121 U. S. 138, the complaint is sufficient to require an answer from the defendants.

A comparison of the language of the complaint with that of the opinion in the case last cited, will convince the Court that the confidence above expressed is fully warranted.

COMPLAINT.	OPINION OF THIS COURT.
That on the 1st day of April, 1891, there existed in the said City of Seattle, State of Washington, taxable moneyed capital (other than and beyond that invested in shares of stock of national banks and beyond	"The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money,

that invested in incorporated banks) owned by individual citizens of said state resident in said city, and there invested in interest-bearing loans and securities to them payable and owing by other citizens of said state residing in said city, of vast amount, to-wit, exceeding the sum of six million dollars.—Paragraph 13, Folio 5.

That on the said first day of April the total capitalization of national banks located in the said City of Seattle was the sum of one and one-half millions of dollars; that the total capitalization of banks there located, but incorporated under the laws of the State of Washington, was the sum of eight hundred thousand dollars, and that at the same time large amounts of moneyed capital were invested in the City of Seattle by residents of said city in the stocks and bonds of insurance, wharf and gas companies, and in addition to the foregoing there then existed in said city other moneyed capital amounting to at least six million dollars, being the other moneyed capital hereinbefore referred to; that in no case as plaintiff is informed and believes, is the stock of any national bank or of shares of stock of any national bank located in the City of Seattle, valued for assessment at a less sum or assessed upon a valuation of less than the par value where the object of the business is the making of profit by its use as money. The moneyed capital thus employed, is invested for that purpose in securities, by way of loan, discount or otherwise, which are, from time to time, according to the rules of the business, reduced again to money and re-invested. It includes money, in the hands of individuals, employed in a similar way, invested in loans or in securities for the payment of money, either as an investment of a permanent character, or temporarily, with a view to sale or repayment or re-investment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property."

Mercantile Bank vs. New York, 121 U. S. 138.

thereof; and, further, that the total assessment and total valuation in the assessment made by the City of Seattle throughout the said City of Seattle for the year 1891, of and upon the capital stock, bonds and shares of banks, banking corporations, insurance, gas, and wharf corporations was the sum of $2,284,-080.00, of which the sum of $1,766,000.00 was upon and of the stock of national banks in said City of Seattle located. —Paragraph 14. Folios 5–6.

That all of said other moneyed capital referred to in the foregoing paragraph hereof numbered XIII, the same being all the moneyed capital in the city owned by resident individual citizens and invested, as aforesaid, in interest-bearing loans, discounts and securities, except that owned by and invested in incorporated banks located in the city, was purposely omitted from assessment and from taxation whatever by said city assessor and other taxing officers of the defendant city, and the same and the whole thereof have escaped taxation.—Paragraph 17, Folios 6–7.

It is apparent that the language of the complaint is identical with that found in the foregoing extract from the opinion of this Court.

The bill of complaint in the case of the Puget Sound National Bank of Seattle vs. King County *et al.*, 57 Federal Reporter, page 433, is practically identical with the language of the complaint in the case at bar. The Circuit Court of the

District of Washington in overruling the demurrer to that bill, said:

"The bill does explicitly set forth the fact and the manner of discrimination against shareholders of national bank stock in the valuation thereof for assessment as compared with the assessment for the same year, of other moneyed capital in the hands of individual citizens of this state, and invested in this state, so as to make a profit from the use thereof as money."

* * * * * * *

"It is true that the bill in this case does not particularize the discriminations complained of or specify instances with any greater minuteness than the bill in the case of the First National Bank of Aberdeen vs. County of Chehalis, in which the Supreme Court of this State affirmed a judgment in favor of the defendant upon a demurrer to the bill. But it is also true that the bill before me is fully as definite and specific in its statement of the facts constituting discriminations as the bill in the case of Boyer vs. Boyer, *supra*, in which the Supreme Court of the United States held that an answer should have been required, and reversed the decision of the Supreme Court of Pennsylvania sustaining a demurrer to the bill."

That the moneyed capital omitted from taxation was other moneyed capital in the hands of individual citizens, within the meaning of Section 5219 of the Revised Statutes of the United States, is clear.

Mercantile Bank vs. New York, 121 U. S. 138.
Boyer vs. Boyer, 113 U. S. 689.
Talbott vs. Board of Commissioners, 139 U. S. 438.
Wasson vs. First Nat. Bank, 107 Ind 206.
Maguire vs. Board of Revenue, 71 Ala. 401.

That such omission resulted in the taxation of the shares in national banks at a rate greater than that imposed on other moneyed capital in the hands of individual citizens, is equally clear. This discrimination against shares in national banks violated Section 5219 of the Revised Statutes of the United States, and rendered the assessment void.

Boyer vs. Boyer, supra.
Mercantile Bank vs. New York, supra.
Supervisors vs. Stanley, 105 U. S. 317-318.

Pelton vs. National Bank, 101 U. S. 143.
Cummings vs. National Bank, 101 U. S. 153.
First National Bank vs. Lindsley, 45 Fed. Rep. 620.
Wasson vs. First National Bank, supra.
Puget Sound National Bank vs. King County, 57 Fed. Rep. 433.

The omission of the above amount of moneyed capital in the hands of individual citizens from assessment was premeditated and was the result of an agreement between the county assessors throughout the state, in which the assessing officers of the city joined. Folio 10.

The tax to complainant was therefore void.

Andrews vs. King County, 1 Wash. 46.

This would be true even though the revenue law of this state forbade such omissions.

First National Bank of Toledo vs. Treasurer, 25 Fed. Rep. 749.
Yick Wo vs. Hopkins, 118 U. S. 356.

In concluding the discussion upon this proposition, the facts alleged in Paragraph 19 of the complaint are peculiarly pertinent. It appears therefrom that the omission worked the forbidden discrimination and necessarily increased the rate of taxation upon the shares of the plaintiff's capital stock, all of which was well known and most wrongfully intended by the taxing officers.

ERROR NO. 6.

The permissive provisions of Section 5219 are not sufficiently broad to allow the taxation of the shares of stock of national banks by municipal corporations.

First National Bank of Richmond vs. City of Richmond et al., 39 Federal Reporter, 309.

ERROR NO. 7.

If it should be said in explanation of the act of the assessor in assessing to the bank 1511 shares of its stock in excess of its capitalization, that the capitalization of the bank was in